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THE BUREAU OF RECLAMATION'S EXCESS LAND LAW:  
ORIGINS OF THE MODERN CONTROVERSY, 1933-1961

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In 1976 the Ninth Circuit Court of Appeals in San Francisco sent a series of shock waves along clearly defined fault lines of California agriculture. The court ruled that the federal reclamation laws dating to 1902 mean what they say: that heavily subsidized irrigation water can be distributed only to 160 acres per individual landowner, and that anyone holding more than a quarter section must dispose of the excess land if he wishes to receive reclamation water.<sup>1</sup> The ruling occasioned surprise and consternation in some quarters, for it seemed to presage a major alteration in the land-tenure pattern of the Central Valley of California, and potentially on other reclamation projects throughout the West. But upon more reflection the only real occasion for surprise and consternation was that the issue should have required recourse to the courts at all. Why should a policy that was clearly established legally, has been praised rhetorically by both political parties, and seems an eminently equitable principle for distributing the benefits of public spending be only erratically enforced for three quarters of a century? Why did the issue arise in particular in the Central Valley, where the land-tenure pyramid presented the very problem the reclamation laws were designed to correct? Why, indeed, did a liberal administration in power during the crucial early years of the Central Valley Project's operation not only fail to enforce

the excess land law, but raise the most serious threat to the redistributive principle of reclamation?

This paper attempts to answer these questions, which lie at the root of the modern controversy over the 160-acre law. The essay analyzes legislation, and particularly administrative practices, in the context of the changing political environment from 1933 through 1961. Two administrative decisions bracket the time span: first, the initial serious administrative loophole opened in reclamation practice by Secretary of the Interior Ray Lyman Wilbur in early 1933; second, the key ruling by Solicitor of the Interior Department Frank J. Barry in late 1961 that reaffirmed the redistributive principle. The heart of the paper deals with the period 1943-1953, when congressional pressure, but especially changing liberal attitudes during the Harry S. Truman administration, seriously weakened the law. While taking cognizance of reclamation policy as a whole, the study focuses on the Central Valley, which, as the Ninth Circuit noted, has been the fulcrum of the modern controversy over the acreage limitation. This paper is an initial attempt to bring a historian's perspective to a subject that has been the almost exclusive domain of economists, notably Paul S. Taylor, and lawyers.<sup>2</sup> But a historian's study is also more than prologue. The central issue — the type of society that reclamation technology should encourage -- was raised explicitly and overshadows the current controversy. The excess land law has far-reaching significance in itself, but it is also a case study of how public subsidies are distributed in the contemporary corporate liberal state.

# I. PROLEGOMENA: LAW AND LAND TENURE, 1902-1946

Federal reclamation policy since its inception in the Newlands Reclamation Act of 1902 has espoused twin objectives: to make barren land productive and to distribute the benefits of public spending widely. Because reclamation projects contained a large subsidy for water recipients, the distribution of benefits assumed critical importance. Farmers who received water had to repay the costs of construction of the irrigation works over a period of forty to fifty years. They did not have to pay interest, however. At an interest rate of 3 percent, the subsidy would amount to 57 percent of the cost over forty years; at 5 percent it would equal 74 percent. Because the generation of electricity since the late 1930s has assumed part of the cost normally chargeable strictly to irrigation, water users have received an additional annual subsidy of from \$35 to \$135 per acre. For holders of 160 acres the potential yearly subsidy could amount to as much as \$20,000. For large landowners, such as the Southern Pacific Corporation, the subsidy could mount to millions each year.<sup>1</sup>

The redistributive principle became known as the 160-acre law or excess land law. The 1902 Act provided that on reclamation projects on public lands individuals could buy tracts not exceeding 160 acres and that for private lands an individual could receive water for not more than 160 acres. The father of the act, Representative Francis G. Newlands of Nevada, placed the social policy in world perspective:

We have not felt in this country the evils of land monopoly. . . . That will be the test of the future, and the very purpose of this bill is to guard against

land monopoly and to hold this land in small tracts for the people of the entire country, to give to each man only the amount of land that will be necessary for the support of a family. . . . Convey this land to private corporations and doubtless this work would be done, but we would have fastened upon this country all the evils of land monopoly which produced the great French revolution, which caused the revolt against church monopoly in South America, and which in recent times has caused the outbreak of the Filipinos against Spanish authority.

Although historians would doubtless find the roots of these revolutions to be more complex than did Newlands, he plumbed a widespread belief of the progressive era that a more equal distribution of property and strong small communities enhanced the cohesiveness of American society. President Theodore Roosevelt, a strong supporter of the distributive principle, interpreted the excess land provision as a classic measure of conservative reform.

I wish to save the very wealthy men of this country . . . from the ruin that they would bring upon themselves if they were permitted to have their way. It is because I am against revolution; it is because I am against the doctrines of the Extremists, of the Socialists; it is because I wish to see this country of ours continued as a genuine democracy; it is because I distrust violence and disbelieve in it; it is because I wish to secure this country against ever seeing a time when the 'have-nots' shall

rise against the 'haves'; it is because I wish to secure for our children and our grandchildren and for their children's children the same freedom of opportunity, the same peace and order and justice that we have had in the past.

The first commissioners of reclamation, Frederick Newell and Elwood Mead, repeatedly championed the acreage limitations, at times arguing that the home-building provisions constituted the fundamental purpose of reclamation policy.<sup>2</sup>

Unfortunately for men like Newlands and Roosevelt, the acreage limitation in neither the 1902 Act nor a restatement in the 1912 Act proved effective. Many landowners who received reclamation water for 160 acres held onto their excess lands and then sold them at high prices to new settlers; the Reclamation Service was powerless to deal with these speculators. A new act in 1914 therefore required landowners to agree to dispose of their excess lands "upon such terms and at not to exceed such price as the Secretary of the Interior may designate" if they wished to receive project water. (The 1914 Act also included the proviso -- never used -- that the secretary could determine administratively the size of farm adequate to support a family and hence could reduce it below 160 acres.) The difficulty of enforcing the provisions of the 1914 Act after a project had been initiated rendered it nearly as fruitless as its predecessors. Accordingly, a distinguished panel known as the "Fact Finders" who investigated reclamation problems in 1924 recommended further tightening, which materialized in the Omnibus Adjustment Act of 1926. The new legislation required holders of excess lands to sign "recordable contracts", before receiving

project water; under these contracts the landholders agreed to have their excess lands appraised by the Interior Department without consideration of the increased value from irrigation and to sell the land at the appraised price. The 1926 Act provided machinery for ending the earlier abuses. The Bureau of Reclamation reported twenty years later that this statute provided an effective means of controlling speculation and realizing the distributive purposes of reclamation.<sup>3</sup>

While implementation of the 160-acre law had been difficult on early reclamation projects, the most serious challenges to the principle arose after 1928, when the Bureau of Reclamation entered the period of its greatest growth. From 1902 through 1928 the annual federal spending for reclamation averaged \$8.85 million. But with the passage of the Boulder Canyon Act in 1928, the Bureau's first true multiple-purpose project, the agency began to take on its modern characteristics of massive construction and a prominent role for hydroelectricity as well as irrigation. The New Deal's emphasis on public works and public over private electrical power caused the bureau's appropriations to spurt to an annual average of \$52 million from 1933-1940. After a slump during World War II, yearly federal spending for reclamation reached a one-year record of \$359 million in 1950. Construction continued at a high rate under the Eisenhower administration, although by that time most of the choicest sites for reclamation projects had been already taken. In large measure because of reclamation dams, the federal share of electricity generated in the country soared from 1.6 percent in 1937 to 12.7 percent in 1944, 13.2 percent in 1952, and 17.1 percent in 1958. The number of acres irrigated under reclamation

projects reached 4,460,979 in 1946 and 9,036,563 in 1964. Since 1902 the Bureau had been supplying irrigation water not only to the public domain but also to private lands; by 1926 two-thirds of the area that received agency water had been in private hands when construction began. In the 1930s it began to provide "supplemental water," or water for farms already under irrigation but which needed additional supplies.<sup>4</sup>

Two of the Bureau's greatest projects during its expansionary period were in California, a state which also presented the most skewed landholding pattern of any reclamation state. The first project entailed sending irrigation water from Boulder (later Hoover) Dam into the Imperial Valley in southern California. The second, the Central Valley Project, was designed to "correct nature's mistake," i.e. that two-thirds of the arable land in the valley lay in the southern part but two-thirds of the water was found in the northern sector. The project had acquired urgency by the 1930s. Heavy pumping in the intensively farmed southern sector was lowering the water table and raised the specter of 380,000 acres going out of production. The cost of CVP -- estimated at \$170 million in the 1930s -- would overwhelm the State of California. Sacramento found an aggressive Department of the Interior willing to build the project, and Congress authorized CVP in 1935. The project was a mammoth undertaking. It included two major dams (Shasta and Friant) and sixteen smaller ones, two long canals and numerous smaller ones, a host of transmission lines and power-generation facilities, and related works. By 1970 more than two million acres were receiving water, and the cost had mounted to more than a billion dollars.<sup>5</sup>

Because both the Imperial Valley and Central Valley projects would operate in areas that were already highly developed agriculturally, the enforcement of the 160-acre law was unusually complex and especially important. When faced with the question in the Imperial Valley, Secretary Wilbur decided to evade the issue during the last ten days of the Herbert Hoover administration. The secretary concluded that, since the Imperial project had been authorized by the Boulder Canyon Act, the reclamation laws would not apply. The project was operated, however, by the Bureau of Reclamation for the very purposes that underlay the earlier reclamation laws. Wilbur's action was highly suspect and was overturned in a formal opinion by Solicitor of the Interior Fowler Harper on May 31, 1945. Harper noted that Wilbur had furnished his ruling in response to a request from the counsel of the Imperial District for a decision "provided, that such ruling would be that the 160-acre limitation did not apply." The solicitor held that the Boulder Canyon Act supplemented the reclamation laws but did not repeal them. Wilbur's ruling "was written solely for the purpose of giving partisan help to the Imperial Water District," said Harper. The acreage limitations remained in force. The Imperial exemption became the subject of protracted litigation in the 1960s, and the courts eventually upheld the excess land law in the valley. Meanwhile, however, Wilbur's ruling marked the first important administrative exemption from the excess land law. As such it not only enabled land-owners in the Imperial Valley to hold onto their large tracts, but also gave opponents of the distributive principle a precedent of sorts when they called for further exemptions over the next forty years.<sup>6</sup>

During the 1930s there was no serious legislative attempt to deal with the excess land provisions across the board. Some significant actions were taken on a case-by-case basis, however. Congress reaffirmed the redistributive principle in two cases. When it authorized the vast Columbia Basin Project in 1937, it gave the secretary of the Interior the authority to reduce the limit as low as 40 acres. A revision of the act in 1943 permitted him to vary the size from 40 to 160 acres depending on the acreage needed to establish a viable farm unit. Congress also applied the 160-acre standard to the Arch Hurley (Tucumcari) Project in New Mexico in 1937, even though the project provided only supplemental water. In each instance the Department of the Interior firmly supported the enactments.<sup>7</sup>

Two exemptions also surfaced, one for the Colorado-Big Thompson Project in Colorado in 1938 and another for the Truckee Project in Nevada in 1940. Both ventures irrigated land at high altitudes and with shorter growing seasons, which supposedly necessitated larger acreages. On the Colorado-Big Thompson project, which provided only supplemental water, the dominant land pattern already conformed to family farms, it was said; if this had been the case, however, there would not seem to have been any difficulty in leaving the 160-acre provisions in force. The exemptions received what a later commissioner of reclamation termed "a left-handed lack of objection" from the Interior Department. Secretary of the Interior Harold L. Ickes did not review either case, and there was some suspicion that the two measures were hidden from consideration until he was out of town. The Nevada exemption went through Acting Secretary A. J.

Wirtz, the Colorado clause through Commissioner of Reclamation John C. Page. The rationales advanced were unsatisfactory in both cases; in fact Ickes's successor, Julius A. Krug, testified that he would have recommended against the exemptions. Congress and the Department insisted that the special circumstances did not constitute a precedent for further exemptions. Wirtz in fact prised the principle of land limitation and asked Congress to defer any other exemptions until the Department could study the matter fully.<sup>8</sup>

During the 1930s the Bureau of Reclamation's actions encouraged some landowners in the Central Valley to think that the acreage limitations would not apply on the project. The usual requirement that recordable contracts be signed before construction began was waived; the Roosevelt administration wanted construction to advance rapidly in order to provide public-works jobs during the depression. The contracts would have consumed time and probably generated controversy. Landowners, however, probably would have been more receptive to contracts in the 1930s, when they suffered from overproduction, than in the booming 1940s. Some Bureau engineers apparently whispered to Central Valley landowners that they had no intention of enforcing the 160-acre law. The exemptions of the Colorado-Big Thompson and Truckee projects encouraged the view that the Bureau during the 1930s was interested chiefly in efficient delivery of water, not the social implications of its projects. S. T. Harding, a prominent California consulting engineer for the Tulare Lake Water Storage District, which included some of the largest landholdings, later lamented that the Bureau had abandoned the "practical engineering direction" displayed on

the Colorado-Big Thompson. To supporters of the excess land law, the failure to start the break-up process early appeared a lost opportunity.<sup>9</sup>

The pattern of land tenure on Bureau of Reclamation projects in operation throughout the West at the inception of the 160-acre law controversy revealed a striking contrast with the landholding structure in the Central Valley of California. On Bureau projects small and medium-sized farms predominated in both number and total acreage; the land concentrated in large holdings was relatively small. In the Central Valley small farms predominated in number, and there was a moderate number of medium-sized farms; acreage was heavily concentrated, however, in a few very large holdings.

The first comprehensive survey of land ownership on Bureau projects, conducted in 1946, showed that the agency was supplying water to 4,460,767 acres held by 108,978 owners. (See table 1.) The average size of farm was 40.9 acres. Of the total 1,482,869 acres were concentrated in 3,886 holdings larger than 160 acres apiece. These lands, held by 3.3 percent of the owners, constituted 30.5 percent of the entire acreage receiving reclamation water. A large fraction of the total -- 613,414 acres -- fell into three subcategories that clearly did not violate the acreage limitation principle.\* Some

\* There were 455,488 acres held by various governmental subdivisions; 108,791 acres on which construction charges had been paid in full or recordable contracts had been signed; and 49,135 acres that were held temporarily in estates but would be disposed of within two years. Because these lands not in violation were not separated out in the Bureau's tabulations by size of ownership, they are unavoidably included in the breakdowns that follow. Since the statistics for Central Valley ownerships would not have categories comparable to these, the contrast between valley land tenure and property ownership on Bureau projects is even stronger than the figures indicate.

704,410 acres -- nearly half the excess lands -- fell in the category of 161 to 320 acres owned by husbands and wives in community property. Sanctioned by a ruling of the solicitor of the Interior Department in 1945, the Bureau concluded that these lands did not violate the acreage limitation. Overall, the agency argued, only 165,145 acres, or 3.7 percent of the total, stood in violation. If the spouse ownership provisions were eliminated, the acres in violation would rise to 870,565, or about 19.5 percent of the total acreage served.<sup>10</sup>

The excess lands were divided into the following groups. (See table 2.) Nearly half of the lands larger than a quarter section -- 576,277 acres held by 2,618 or 2.4 percent of the owners -- fell in the 161-320-acre bracket. Their lands in excess of 160 acres totaled 157,397, or 23.5 percent of the total of excess lands. The 321-640-acre category embraced 277,216 acres and 176,296 in excess of 160, divided among 637 units; this .6 percent of the landholders controlled 6.9 percent of the total acreage and 26.3 percent of the land in excess. The remaining 320 barons, .3 percent of the landowners, enjoyed 641 or more acres apiece; their domain surveyed 374,429 acres or 9.3 percent of the total, and 337,629 acres in excess or 50.3 percent of the total in excess. The excess lands tended to be concentrated in areas where productive conditions to some extent necessitated larger acreages. Most of the projects with the largest excess holdings were characterized by high elevation, a short growing season, marginal soil fertility, and suitability for crops that typically required larger acreages for profitable production, or a combination of these factors. (Farmers on some of these projects, such as the North Platte

in Nebraska and Wyoming, had found it hard to repay their construction costs -- a circumstance that raised the question, some years too late, of whether the lands had been worth irrigating in the first place.) Some of the projects with the largest percentage of violations, such as Salt River in Arizona, had been started before the more stringent provisions of the 1926 Omnibus Act came into play.<sup>11</sup>

By contrast the San Joaquin Valley, which would be the major beneficiary of the Central Valley Project, presented perhaps the most distorted landholding pattern the Bureau of Reclamation had encountered. A study of the valley floor area of the three counties that would benefit most -- Kern, Tulare, and Madera -- was made by Edwin E. Wilson and Marion Clawson of the Bureau of Agricultural Economics for the reclamation service in 1945. (See table 3.) A total of 1,912,000 acres were divided among 12,941 owners. The average size of farm was 148 acres. Owners of 160 or fewer acres amounted to 11,267, or 87 percent of the total; they controlled 519,200 acres, or 27 percent of the total. Landholders of more than 160 acres numbered 1,674 or 13 percent of the total. The 161-320-acre category included 928 owners or 7 percent, who held 212,600 acres, or 11 percent of the total. The 321-640 bracket had 417 owners, or 3 percent of the total, and held 187,900 acres, or almost 10 percent of the total. The very large holders of more than 640 acres were 3 percent of all landowners, but they held 52 percent of the land. At the top of the pyramid 25 landowners, or .2 percent of the total, possessed more than 5120 acres apiece for a total of 605,900 acres, or 32 percent of all the land. Of the 1,125,160 acres owned by those with more than 640 acres, 1,072,500

would have been in excess of a quarter section per owner. Thus the Central Valley barons who owned a square mile or more possessed 95.4 percent of the land that would be in excess, compared to 50.3 percent for their counterparts on other Bureau projects. The Central Valley presented a pyramidal land-tenure structure reminiscent of that found in Latin America.<sup>12</sup>

Opponents of the 160-acre law in the valley might contend that these statistics were misleading because some of the area included rangeland instead of cropland. While their contention was partially correct, it did not change the overall picture significantly. Irrigation would convert some rangeland into cropland. In any event the ownership of lands suitable for irrigation revealed a pattern that was only slightly less skewed than that for the valley floor as a whole. Statistics differed somewhat because expert opinion varied on what land was irrigable, but the same general pattern held on two studies of valley land ownership. A survey by the State of California Water Project Authority in 1946 considered five San Joaquin Valley counties -- Kern, Tulare, and Madera, plus Fresno and Kings. (See table 4.) The state study estimated that 2,362,430 acres, divided among 72,770 holdings, were eligible for project water. The average size of the farms under 160 acres was 17 acres. The total area of lands in excess of a quarter section stood at 1,147,080. Of these, 193,116 acres, held by 981 owners, were excess lands in tracts of 161 to 320 acres; this group -- equal to 2 percent of the owners -- held half the irrigable acres and 35.6 percent of the land in excess of a quarter section. The .96 percent of owners -- 926 in number

who possessed more than 320 acres controlled 40.1 percent of the total irrigable acres, and their land in excess of a quarter section comprised 27.5 percent of the total amount irrigable. This small band's excess lands represented 77.6 percent of all excess acreage. (The California report did not furnish a breakdown for tracts larger than a half section, probably because it would have corroborated the BAE figures.)<sup>13</sup>

The BAE study of 1945 analyzed the irrigable areas of Madera, Tulare, and Kern counties. (See table 8.) In these three counties 955,700 irrigable acres were divided among 9,551 owners. Some 377,900 acres, or 40 percent of the total, were held by 8,417 owners, or 88 percent of the total. This meant that 1,134 landholders, or 12 percent of the total, held 577,800 acres, or 60 percent of the total. Of this portion 396,300 acres, or 41.4 percent of the total irrigable acreage, were in excess of a quarter section. The 161-320-acre category included 674 owners, or 7 percent of the total, with 43,200 acres of excess land, or 11 percent of the total, in tracts larger than a quarter section. The 321-640-acre bracket was comprised of 278 owners, or 3 percent of the total; they enjoyed 76,400 acres, or 19 percent of the tracts in excess of 160 acres. The concentration of irrigable land in farms of more than 640 acres was still high. Some 182 owners, or 2 percent of the total, held 276,700 acres, or 70 percent of the total excess irrigable land.<sup>14</sup>

These figures contrasted sharply with those for other Bureau projects throughout the West. Of those who held more than 160 acres, 3.3 percent of the owners controlled 30.5 percent of the land, and the excess area constituted about 17 percent of the total



on all Bureau projects. In the five Central Valley counties in the state study approximately 2 percent of the owners held half the irrigable acres, and that area made up 35.6 percent of the total irrigable area. In the three counties in the BAE analysis, 12 percent held 60 percent of the land, and the area in excess was 41.5 percent of the total irrigable acres. Of those on Bureau projects who held more than 320 acres, the comparable figures were .9 percent holding 16.2 percent of the total, and the area above 160 acres making up about 12.7 percent of the total irrigable acres. In the California study, the comparable figures were .96 owners, 40.1 percent of total, and 27.5 excess; in the BAE report, 5 percent owners, 44 percent of total, and nearly 37 percent excess. Of those with more than 640 acres on all Bureau projects, the figures were .3 percent owning 9.3 percent of the total, and the area above 160 acres on these holdings comprising 8.3 percent of the total irrigated. In the BAE three-county study the figures ran 2 percent owning 32 percent of the total, and the excess making up 28.8 percent of the total irrigable acres. In summary, Central Valley landholders with more than 160 acres controlled twice as much land as owners on other Bureau projects, and the largest landowners held three to four times as much as on agency projects in operation.

The Reclamation Bureau had achieved the goal of family farms outside California at best imperfectly. The operation of the excess land law in the first four decades of the century has received too little analysis to make firm judgments on its effects possible. It appears likely, however, that in some cases the Bureau could take credit for altering land ownership patterns through application of the 160-acre

rule. In others the relative scarcity of large holdings probably reflected preexisting land-tenure patterns as much as it did the Bureau's efforts at compliance. Some of the major violations came about on projects that antedated the 1926 Act which finally provided the necessary teeth for enforcement. At the very least in its first four decades the Bureau, both fortuitously and by design, had avoided a program of large-scale subsidies to large farms and agribusiness corporations that would have solidified and encouraged a skewed pattern of landholding.

As the first components of the Central Valley Project neared completion during World War II, the probable effects of reclamation's great undertaking remained clouded. The Bureau by itself could not alter the Central Valley land tenure pattern completely. But "if the present reclamation law is retained intact and is vigorously enforced, it can have a substantial effect upon landownership and land operation" in the project area, Wilson and Clawson concluded in their 1945 BAE study.<sup>15</sup> During the late New Deal, both the machinery and the will to use it appeared to stand ready. But if it were not, a program with redistributive intent could instead use federal subsidies to further distort the unequal distribution of resources.

TABLE 1

LANDHOLDINGS LARGER THAN 160 IRRIGABLE ACRES PER OWNERSHIP ON  
BUREAU OF RECLAMATION PROJECTS RECEIVING WATER IN 1946

	Number of Ownerships	Acres
TOTAL IRRIGABLE AREA SURVEYED	108,978	4,460,767
<u>Landholdings Larger Than 160 Acres Per Ownership</u>		
Gross Irrigable Area	3,886	1,482,869
Estates	143	49,135
<u>Acreage Exempt From Excess Land Limitations</u>		
160 Acres per Individual in Each Ownership	3,187	740,410
Other Exemptions	556	455,388
Total of All Exemptions	3,743	1,159,798
Excess Acreage <sup>1</sup>	1,284	273,936
Excess Land With Construction Charges Paid Up or Held Under Recordable Contracts	378	108,791
Known Excess Land in Violation of Acreage Limitations	906	165,145 (3.7%)

<sup>1</sup>Includes some acreage reported as held under recordable contracts. Also includes acreage on which construction charges have been paid in full and are therefore not subject to the excess land limitations.

Source: Landownership Survey on Federal Reclamation Projects (Washington: Government Printing Office, 1946), p. 15.

TABLE 2  
NUMBER AND SIZE OF OWNERSHIPS ON  
BUREAU OF RECLAMATION PROJECTS RECEIVING WATER IN 1946<sup>1</sup>

Size Groups	Ownerships		Irrigable acres		Irrigable land in excess of 160 acres	
	Number	Percent	Acres	Percent	Area	Percent of Total in Excess
40 acres or less	78,059	73.4	724,571	18.0	-	-
41 to 80 acres	15,754	14.8	1,012,246	25.1	-	-
81 to 120 acres	5,382	5.1	536,656	13.3	-	-
121 to 160 acres	3,658	3.4	528,772	13.1	-	-
161 to 320 acres	2,618	2.4	576,277	14.3	157,397	23.5
321 to 640 acres	637	.6	277,216	6.9	176,296	26.3
641 to 1,280 acres	164	.2	140,170	3.5	337,629	50.3
Over 1,280 acres	66	.1	234,259	5.8		
Total	106,338	100.1	4,030,167	100.0	671,322	100.1

<sup>1</sup>Excludes 430,600 acres on Boulder Canyon Project-All American-Imperial Valley, for which data were not available for these particular size groups.

TABLE 3

OWNERSHIP OF ALL CLASSES OF LAND AND OF CROPLAND BY ACREAGE OF LAND  
OF ALL CLASSES IN EACH OWNERSHIP UNIT, VALLEY FLOOR AREA OF  
MADERA, TULARE, AND KERN COUNTIES, 1940

Acres of all land per ownership unit	Ownership units		Area of all land		Area of cropland	
	Number	Percent	1,000 acres	Percent	1,000 acres	Percent
80 and less	9,559	74	311.0	16	268.2	21
80-160	1,708	13	208.2	11	167.9	14
160-320	928	7	212.6	11	167.3	13
320-480	271	2	105.3	6	76.7	6
480-640	146	1	82.6	4	58.8	5
640-1280	208	2	177.1	9	130.1	10
1280-1920	51	.4	79.6	4	63.6	5
1920-2560	22	.2	49.6	3	37.7	3
2560-5120	23	.2	80.3	4	58.9	5
Over 5120	25	.2	605.9	32	217.5	18
TOTAL	12,941	100	1912.2	100	1246.7	100

Source: Edwin E. Wilson and Marion Clawson, Agricultural Land Ownership and Operation in the Southern San Joaquin Valley (Berkeley: Bureau of Agricultural Economics, June 1945), p. 23.

TABLE 4

LANDOWNERSHIP IN THE UPPER SAN JOAQUIN VALLEY WHICH CAN RECEIVE  
SERVICE FROM CENTRAL VALLEY PROJECT (FRESNO, KERN,  
KINGS, MADERA, AND TULARE COUNTIES)

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Total area surveyed	acres	2,342,570
Total number of holdings		72,770
Number of holdings with areas:		
In excess of 160 acres		1,907
In excess of 320 acres		926
Total area of holdings with areas:		
In excess of 160 acres	acres	1,147,080
In excess of 320 acres	do	945,160
Area of lands in acres in excess:		
Per holding of 160 acres	acres	841,960
Per holding of 320 acres		648,844
Percent of total area of lands in excess:		
Per holding of 160 acres		35.9
Per holding of 320 acres		27.7
Presently irrigated lands in holdings with areas:		
In excess of 160 acres	acres	550,820
In excess of 320 acres	do	438,960

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Data as of March 1, 1946

Source: "Water Project Authority of the State of California Supplemental Report on Application of Excess Land Provisions of Federal Reclamation Laws to Central Valley Project, April 1947," in Senate, Subcommittee of the Committee on Public Lands, Exemption of Certain Projects from Land-Limitation Provisions of Federal Reclamation Laws (Washington, 1947), p. 45.

TABLE 5  
 OWNERSHIP OF IRRIGABLE LAND, BY ACREAGE OF IRRIGABLE  
 LAND IN EACH OWNERSHIP UNIT -- MADERA, TULARE  
 AND KERN COUNTIES 1940

Acres of irrigable land per ownership unit	Ownership units		Area of irrigable land		Area of excess irragable land	
	Number	Percent	1,000 acres	Percent	1,000 acres	Percent
80 and less	7,176	75	229.2	24	-	-
80-160	1,241	13	148.7	16	-	-
160-320	674	7	151.0	16	43.2	11
320-480	184	2	69.8	7	40.3	10
480-640	94	1	51.2	5	36.1	9
640-1280	127	1	103.4	11	83.1	21
1280-1920	26	.3	39.3	4	35.1	9
1920-2560	7	.1	16.0	2	14.9	4
2560-5120	12	.1	33.5	3	31.6	8
over 5120	10	.1	113.6	12	112.0	28
TOTAL	9,551	99.6*	955.7	100	396.3	100

Source: Wilson and Clawson, Agricultural Land Ownership and Operation in the Southern San Joaquin Valley, p. 30

\*Figures do not add to 100 because of rounding.

## II. CONGRESSIONAL ATTACK -- LIBERAL DEFENSE, 1943-1948

As the first parts of the project neared completion in 1940-1941, the social dimensions of CVP presented an urgent opportunity. The locus of policy-making moved up to the secretarial level of the Department of the Interior. Other major projects, such as Bonneville Dam on the Columbia River, were also nearing completion. CVP, Bonneville, and other projects gave Ickes and his liberal coterie a chance to breathe social purpose into their technological wonders. They held that federal expenditures should promote the redistribution of power in society. By affecting the pattern of land ownership, reclamation projects could foster a more democratic, egalitarian, community life. Since Ickes did not trust the Bureau's stand on the distribution of water and power, he formed a new Division of Water and Power in his office in 1941 to handle the products from the Reclamation Bureau's dams. The first head of the division, lawyer Abe Fortas, promptly announced: "Water and power must be distributed to the people without private profit." When Fortas became under secretary in 1943, his successor, Arthur Goldschmidt, lauded CVP as "the best opportunity now available for correcting the land pattern of California."<sup>1</sup>

In this atmosphere the bureau began to take a firmer line. Commissioner of Reclamation John C. Page had advised Ickes in

December 1940 that the 160-acre law should not apply to lands that received only supplemental water. A month later, however, Page was informing Californians that the limit would reach all landowners receiving project water. Ickes brought the bureaucracy further into line when he reorganized the Bureau in 1943 and replaced previous officials with believers in the land provisions. One was the new commissioner, Harry Bashore; another was Richard Boke, a New Deal veteran who became director of Region II which supervised the Central Valley. The department also began a series of studies, including the BAE survey, designed to test what social effects the project could have in the valley. In November 1943 Ickes, Bashore, and President Franklin D. Roosevelt removed whatever doubts might still have existed by informing the National Reclamation Association that the limit would apply in the Central Valley Project.<sup>2</sup>

But before the department could implement its plans, it faced the task of simply preserving the 160-acre law. Representative Alfred J. Elliott, a Democrat from the San Joaquin Valley town of Tulare, attached a rider to the rivers and harbors appropriation bill in March 1944 that would have exempted the entire Central Valley project from the excess land provisions. Elliott's move caught the department by surprise. The amendment was introduced in the final stages of the consideration of the entire bill in the House, and the department had only a few hours to maneuver against the rider. Departmental legislative liaison men cooperated with a liberal California Democrat, Representative Jerry Voorhis, who proposed a substitute

amendment that would have lifted the acreage limitation for all lands receiving water in 1937, when the final authorization of CVP was passed. Paul S. Taylor, the University of California at Berkeley economist who served as a consultant to the secretary of the Interior on Central Valley matters, interpreted the Voorhis amendment as strictly a tactical maneuver. Taylor and other liberals sensed that nothing short of outright repeal would satisfy Elliott and the large landowners. While the 640-acre standard would help medium-sized farmers, it still threatened the very large holdings. Elliott insisted on his blanket exemption, and the House adopted the rider.

In the Senate the chief promoter of the Elliott amendment was Sheridan Downey, a Democrat from Sacramento, California, who had gone to the Senate in 1939. Downey's role was puzzling. Elected as a New Deal liberal, he took increasingly conservative positions once in office. Much of Downey's law practice had concerned irrigation law, and his clients presumably were larger landowners. He also had by his own admission "substantial," though unspecified, farm holdings in the Central Valley. He appears to have attracted political support from large landholders, and in 1947 he published a ghost-written book, They Would Rule the Valley, under his name that condemned the Bureau as totalitarian and painted a shining picture of large landowners, particularly the DiGiorgios. The relative weight of personal conviction and political convenience were difficult to sort out in Downey's case. But as he garnered conservative support, he lost liberal backing; in 1950 he abandoned his Senate seat without a fight. From 1944 through 1948 he made the repeal of the 160-acre law his personal crusade.<sup>4</sup>

The Interior Department was better equipped with time and allies in the Senate than the House. Few senators favored outright repeal. Some conservative members, such as John H. Overton of Louisiana, the chairman of the subcommittee considering the rivers and harbors bill, favored a modification. At first some officials in the department favored the Voorhis amendment or a similar compromise to combat the Elliott rider. During a strategy conference, Michael Straus, first assistant secretary of the Interior, said to those who supported a flat-out defense of the 160-acre law: "'I tell you, boys, you're right -- if you can win.'" William E. Warne, assistant commissioner of reclamation, put his hand to his mouth and muttered, "'But I don't think you can,'" and got up from the table scowling. In his testimony Warne advocated a compromise settlement.<sup>5</sup>

By midsummer 1944, however, whatever possibilities of compromise may have once existed had vanished. Commissioner Bashore testified that the Bureau stood firmly behind the 160-acre law. Liberal to moderate senators, such as Carl Hatch and Dennis Chavez of New Mexico, Carl Hayden of Arizona, and Lister Hill of Alabama, joined forces to block any dilution of the principle. The most effective ally was Robert M. La Follette, Jr., of Wisconsin, a son of the famous insurgent Republican and 1924 Progressive party candidate for president. The younger La Follette had chaired the Senatorial investigation of migratory labor, and had become acutely aware of the social problems in the Central Valley which stemmed from the pyramidal land-tenure pattern. La Follette and Secretary Ickes represented an ideological and geographical alliance harking back to the turn of the century. In the closing hours of the 1944 legislative session La Follette and his



allies threatened to filibuster if the Elliott amendment were included in the final version of the rivers and harbors bill. Their tactics succeeded in killing the rider for that session of Congress.<sup>6</sup>

Compromise proved impossible in 1944 because the 160-acre law raised an overtly ideological question: What type of society should government policy foster in the Central Valley? The defense of the excess land law in 1944 represented one of the last hurrahs for what has been termed elsewhere the "community New Deal." The ideal of the family farm commanded wide support among political moderates and even some conservatives. But for "community New Dealers" diffused property ownership was the first step toward their vision of an ideal community -- an organic view of society, which would embrace a rough equality of property, and cooperation with group life assuming more importance than traditional individualism. Technology in agriculture, especially in California, usually encouraged individualism rather than equality. Liberals hoped to use technology in the Central Valley, however, to partially remake the preexisting society in line with their ideal vision. In its planning for the postwar period the Department of Agriculture had not yet succumbed to the notion that agriculture was strictly an economic proposition; the ideal of the farm community as a way of life remained strong. Many liberals within the Interior Department still adhered to their visions of the 1930s. They viewed with dismay the mounting Congressional attacks on the New Deal, particularly community programs such as the Farm Security Administration. Assistant Secretary Oscar L. Chapman told Ickes the attacks were "an agrarian counter-revolution." Chapman interpreted the clash starkly:

"It is the organized big men against the unorganized little men; the kulaks against the peasants; the haves against the have-nots." Strong, continuing liberal support of the excess land law would be crucial for the community and redistributive components of liberalism. Ironically, Chapman, Straus, and some of their fellow liberals were later to play a major role in the evisceration of their hopes in the Central Valley.<sup>7</sup>

In 1944, however, when New Deal liberalism retained at least some of its old power, the ideological bases of the conflict over the 160-acre law emerged with a clarity that would not reappear for perhaps two decades. The Bureau firmly supported the redistributive principle and underscored its importance for building community spirit. Commissioner Bashore dismissed the canard that the 160-acre law should apply only to public lands; he said the limitation should extend particularly to private land. "At the bottom of the whole matter," he argued, "is that fact that . . . Federal funds are expended for the improvement of private property." Subsidies for private property could be justified only if they had a public purpose, and reclamation's "main public purpose," he said, was "to provide increased opportunities for settlement." "Without the excess land provisions, there is no good ground for asking Congress to vote special benefits for the improvement of private property." Bashore had no qualms about small farms' economic viability in the Central Valley and pointed to the vast number of such acreages already in existence as evidence. Bureau of Agricultural Economics researchers who studied the efficiency of farms in the valley recognized that farms that were too small could be as serious a problem as large tracts. They estimated, however, that dairy and fruit farms could operate efficiently and provide an acceptable

standard of living if they contained as few as forty acres, and that summer field crop farms were viable at eighty acres.<sup>8</sup>

The excess land theory entailed more than efficiency; it implied also a vision of society built upon egalitarian, cooperative communities. Bashore emphasized that family farming would encourage the spread of prosperous "small farm communities" such as those which already flourished in many parts of the valley. Bashore's theme was embellished by a varied chorus that included veterans groups, the National Grange, labor unions (chiefly the Congress of Industrial Organizations), and church groups. The Rt. Rev. John O'Grady, representing the National Catholic Rural Life Conference, charged that large landowners wanted to perpetuate the land ownership pattern in order to have a continuing supply of cheap migratory labor. O'Grady stressed how much the lives of these working poor would be improved if they could acquire land and sink roots in small communities. "Are we going to depend on these feudalists, on their benevolence, that they will distribute the land, or are we going to have a national policy in regard to land?" he demanded. Another Bureau supporter, Frank T. Swett, the director of the Contra Costa County Farm Bureau, contended the Central Valley project could create "agricultural commonwealths, with family farms" in place of farm workers "forced to bow down to the domination of caviar and champagne landowners."<sup>9</sup>

Intrigued by social-engineering possibilities, department liberals had contracted for an important and controversial study of CVP's possible role in community-building by the BAE. The study

sought to answer the question: "What . . . is the effect of scale of farm operations upon the character of the rural community?" Heading the study was Walter Goldschmidt, who had recently finished a Ph.D. in anthropology at Berkeley with a dissertation on the Central Valley town of Wasco, which was later published under the title As You Sow. Goldschmidt's strategy was to compare two towns that had approximately the same population and produced the same crops but had markedly different landholding patterns. Dinuba, located in the center of the San Joaquin Valley near Fresno, had an average farm size of 89 acre equivalents. Arvin, situated at the south end of the valley near Bakersfield, had an average farm size of 285 acre equivalents, and much of the acreage was owned by the giant DiGiorgio Farms. The average income in Dinuba was about ten percent higher than in Arvin and reflected a more even distribution of income through the various ranks. In Arvin 59 percent of the citizens interviewed earned less than \$2250 annually; in Dinuba, 42 percent. One of the most striking differences was in occupation. In Dinuba 29.1 percent of the population worked as farm laborers; in Arvin, 65.3 percent. The number and percentage of businessmen and skilled workers in Dinuba substantially outstripped their counterparts in Arvin. The small-farm community supported 62 business establishments and generated an annual retail trade of \$4,383,000, compared to 35 business houses and \$2,535,000 for the large-farm community. Dinubians enjoyed a higher standard of living than Arvinians, as measured by such criteria as electricity, automobiles, and quality of housing. Community services, ranging from public

schools to paved streets and garbage disposal, were far superior in Dinuba. Moreover, every index of community life -- recreation, clubs, churches, civic organizations, and city government -- reflected much greater and more diverse participation in Dinuba than in Arvin.<sup>10</sup>

The reasons for these discrepancies were clear to Goldschmidt. "The small-farm community is a population of middle-class persons with a high degree of stability in income and tenure, and a strong economic and social interest in their community," he said. "Differences in wealth among them are not great, and the people generally associate together in those organizations which serve the community." In the large-farm town, by contrast, few persons enjoyed economic stability; for the majority their "only tie to the community is their uncertain and relatively low-income job." Differences in wealth were great, and the social contacts between members of different classes were rare. Indeed, many of the operators of large farms in Arvin were absentees, and if they did live there, they often sought recreation elsewhere. "Their interest in the social life of the community is hardly greater than that of the laborer whose tenure is transitory." The social ethos of Arvin was impermanence and alienation; of Dinuba, stability and community. Goldschmidt attributed the differences in the communities "confidently and overwhelmingly to the scale-of-farming factor."<sup>11</sup>

The study from the start aroused ideological antagonisms. There was little refutation of Goldschmidt's findings, for many of the differences between the two towns were apparent to anyone motoring down the main streets. In place of the anthropologist's conclusions,

Downey, Elliott, and their supporters argued only that Dinuba was older and hence had had more time to develop the social institutions. Goldschmidt had largely controlled for the time factor, however, by using retrospective data for Dinuba. Most of the criticism of his study was couched in terms of federal "snoopers" invading the privacy of individuals' homes, asking questions about "dirty rugs" and ethnicity, and using rationed gasoline and interfering with productive farmers while there was a war on. The study was all too pointed in establishing the differences the scale of farming made. Opponents wanted it buried, and they nearly succeeded. Their pressure made the BAE extremely uneasy about publishing it. When Clinton Anderson became secretary of agriculture in 1945, he apparently kept the document locked in his office. Eventually, however, Senator James Murray of Montana, chairman of the Special Committee to Study Problems of American Small Business Enterprises, forced the study out of Anderson's hands. Murray published it as a committee print, but not before the secretary of agriculture had extracted a pledge that the publication's ties with BAE go unmentioned.<sup>12</sup>

Although opponents of the land limitations implied that Arvin would become Dinuba at some future date, they did not in reality subscribe to the ideal of the prosperous small community. They held to a strongly individualistic view that subordinated community values to economic goals as determined through private enterprise: redistribution through government action was anathema. They claimed that Central Valley agriculture, and the accompanying social patterns, resulted from the inexorable working of natural geographic and economic

forces. Geography dictated large farms for efficiency; the market rewarded those who demonstrated the most skill. Senator Downey urged the Bureau to conform to "laws not only of men but of nature -- for instance, the law of hydraulics." Federal subsidies, then, only recognized the natural processes. Russell Giffen, a Mendota, California, farmer who owned more than 42,000 acres, told a Senate committee: An "industrious," "decent," "honorable" farm boy "should have the right to acquire more than 160 acres if his efforts justify it."

Representative Bertrand Gearhart, a San Joaquin Valley lawyer, called on the Bureau to "just put water on all of the land and treat all of our citizens without discrimination." The opponents' position resembled that which James Willard Hurst has identified in the nineteenth century, which held that the object of government policy should be to assist in the release of individual energies. There was a fine irony in the opponents' reliance on natural forces. In California, as in few other states, the land tenure pattern had been determined less by natural forces than by direct governmental intervention in the form of ancient land grants, and the very concept of the Central Valley Project proposed a radical man-induced change in natural processes.<sup>13</sup>

With the defeat of the Elliott rider in the Senate, the opponents of the 160-acre law had retreated to await a more propitious time to renew their attack. Time was on their side. Changes in the personnel and thinking of officials in the departments of Agriculture and the Interior, and among liberals generally, after the war accelerated the decline of the redistribution and community aspects of New Deal liberalism. An early indication of liberal weakening appeared in

an opinion by Fowler Harper, solicitor of the Department of the Interior, on August 21, 1945. He ruled that in community property states, of which California was one, husbands and wives could each receive water for 160 acres. Harper's opinion apparently did little more than give official sanction to a policy the Bureau had tacitly accepted for some time. The opinion was highly superficial. Harper treated the issue as one chiefly involving the interpretation by state courts of the wife's interest in the estate. He argued essentially that the precedents were contradictory and too complicated for the Department to resolve; and since reclamation law did not specifically forbid the practice, it was acceptable. The shallowness of the opinion could be discerned from Harper's off-hand assertions that the purpose of reclamation was solely to reclaim arid lands and that private lands were only incidentally involved in reclamation projects. A later solicitor of the Department, Frank J. Barry, who held office 1961-1968, stated informally of the 320-acre ownerships permitted by the 1945 opinion: "I would have no trouble saying that this was a violation of reclamation law."<sup>14</sup>

Harper's ruling led one wag to suggest that the Bureau of Reclamation would give Cupid an assist. He anticipated newspaper advertisements such as "Young farmer whose wife has divorced him would like to arrange temporary marriage so he will be able to obtain water from the Central [Valley] Project" or "Death of farmer's wife makes quick marriage necessary to save crops." The ruling did not amuse or satisfy the "old curmudgeon," however. Ickes felt the marital exception violated the intent of the law, but he let it stand because of its years of operation.<sup>15</sup>

The secretary's time to wrestle with the issue was quickly coming to a close. In February 1946 he fell out of the Cabinet in a celebrated dispute with the new president, Harry S. Truman, over the nomination of oil millionaire Ed Pauley as under secretary of the Navy. Ickes' successor was Julius A. Krug, an electrical power engineer who had served as chairman of the War Production Board. Krug supported the 160-acre law, but he did not take the personal interest in the issue his predecessor had. The WPB under Krug had epitomized cooperation between big industry and government; the new secretary's main interest appeared to lie with expansion of federal power generation, but shorn of its planning and redistributive elements. A protege of Bernard Baruch and David Lilienthal, Krug kept "quite a lively eye out to his business future," recalled one of his assistant secretaries, Warner Gardner. His administration was "much more passive than Mr. Ickes'." The departure of "Honest Harold" was only the most dramatic among the exodus of Roosevelt-era liberals in late 1945 and early 1946. Fortas, Bashore, and the two Goldschmidts left their federal posts. Among those who stayed was Michael Straus, who had already demonstrated that he weighed the 160-acre principle in a political balance. He became commissioner of reclamation, quickly consolidated his power, and emerged as a very powerful bureau chief who often operated independently from, and even contrary to, the secretary of the Interior. Warner moved up to assistant secretary in 1947.<sup>16</sup>

The shifting current of liberal thought became apparent in late 1945 at a department-wide institute to plan postwar policy. The

institute revealed that the ideal of the family farm as a way of life and object of social policy was giving way to a primary concern with the "development of successful farms operated as business enterprises." The department should not abandon the family farm outright, its land planners said, but it "should recognize that this is a period of cultural transition." They feared that "inelastic and unsound policies" could reduce farmers to "peasantry." While some reclamation projects may have needed more elastic policies, in the Central Valley latifundia, not peasantry, presented the main problem. That the immediate postwar years represented a period of transition could scarcely be denied. John Shover identified 1945 as the beginning of the "great disjuncture" in American agriculture, in which technology and the onset of agribusiness concentrations worked a dramatic transformation in the structure of agriculture and rural life. Under Clinton Anderson the policies of the Department of Agriculture became more closely tied to the American Farm Bureau Federation and the emerging agribusiness approach. Department of the Interior officials largely abandoned their former emphasis on redistributive policies in favor of economic growth, and they began to directly reverse the community programs of the 1930s. When Downey spearheaded the next assault on the 160-acre law, in 1947-1948, the Department of the Interior and the Bureau of Reclamation found themselves in an increasingly ambiguous position.<sup>17</sup>

The election of the Republican-controlled Eightieth Congress and the putative conservative trend it represented gave Downey his next opening. In 1947 he introduced a bill, S. 912, to repeal the excess land law on the Central Valley Project. To lessen the appearance

of special legislation he included two other smaller projects, the San Luis Valley Project in Colorado and the Valley Gravity Canal Project in Texas. The bulk of the testimony during the sixteen days of hearings before the Senate Subcommittee on Irrigation and Reclamation concerned the Central Valley, however, and Downey, a member of the parent Public Lands Committee but not the subcommittee, played the major role. The Republicans who nominally ran the subcommittee -- Eugene D. Millikin of Colorado, its chairman, and Zales N. Ecton of Montana, who usually presided -- delighted in giving a Democrat an arena in which to slice up a Democratic administration. The two Democratic members of the subcommittee, Hatch of New Mexico and Joseph C. O'Mahoney of Wyoming, took little part in the festivities.<sup>18</sup>

Downey acted virtually as a prosecuting attorney who had uncovered a mammoth conspiracy. His orchestration varied from invoking lofty Constitutional principles to hectoring Richard Boke about which seat Secretary Krug had occupied during an automobile tour of the valley. The Bureau was "planning and plotting the destruction of a free economy to institute totalitarian rule over the Central Valley," Downey charged. Even more than in 1944 the opponents stressed the evils of bureaucracy and the unworkability of the 160-acre law. One of their main arguments concerned underground water. Water that was put on the land would seep underground and gradually raise the water table. Landowners could continue pumping, without regard to the 160-acre limitation, and, according to the opponents, there would be no way of restricting the number of acres irrigated from underground supplies. Northcott Ely, attorney for the State of California Water Project Authority, contended

that this problem endangered the CVP from two directions. First, it undermined the financial success of the project because the larger landowners would not join the irrigation districts and hence would not be assessed for substantial benefits they would be receiving indirectly. Second, the smaller landowners would in any case have to bear an unfair share of the assessments. The problem "would tax the wisdom of Solomon really," Ely said. But his solution was to throw out the baby when the water came in. Instead of leaving the 160-acre law "as a threat and indeterminate sort of mortgage or lien . . . floating over the heads" of the landowners, the limit should be repealed. Then, later, if the Bureau wanted to buy the large acreages and distribute them, "well and good, but it need not be done under the pressure of the 160-acre limitation." By giving first priority to lifting the acreage limit, Ely was really saying that the redistribution need not take place at all.<sup>19</sup>

The avowed concern of Downey, Elliott, and Ely for the small landowners seemed specious and even cynical. Michael Straus observed that acceptance of their conclusions required that "we make a decision that the human race has so changed its character that the large landowners are supporting this proposal now before you so that they would be prevented from being the unwilling recipients of benefits for which they would not pay. I do not want to be cynical, but it seems to me that that reasoning does violence to common sense. . . . I simply think that these large and corporate landowners in the Central Valley want interest-free water, and the present law blocks them, just as it was designed by Congress to do, so that they are out to kill the law." Later testimony demonstrated that the water table almost certainly would not be raised rapidly enough to provide a secure source by itself;

surface water, which would be subject to the 160-acre law, would still be required. But in any case the Bureau believed that the landowners could be assessed for the added benefits derived from ground water, even if they refused to join the districts; otherwise they would not want the law repealed. "You think that is what is worrying them?" asked Senator Ecton. "You bet," Warne replied.<sup>20</sup>

The application of the land limit no doubt entailed complicated administrative problems, of which the underground water situation was only one. Potentially the most serious problem would arise if a large number of landowners, large or small, refused to join an irrigation district. Then the Bureau would face the unpalatable choice of assessing the charges against a smaller number of users, and presumably most of them small farmers at that; of taking a potentially sizable loss on the project; or of denying water to an entire district until a certain proportion of landowners in the district signed recordable contracts. In 1944 the Bureau had introduced a hastily drafted measure that would have withheld water until 75 percent of the landowners in a district had signed up. Bashore backed away, however, when Downey and others charged coercion. Bureau officials tried to depict the project as voluntary because no one had to sign up for water, and hence would not have to dispose of any land. In reality, however, some coercion would operate as farmers might be forced into water districts in order to preserve their 160-acre base. While the bulk of landowners might desire the federal benefits, some who might prefer to pass up even the underground water might nevertheless be forced by location or circumstances to accept them. Yet this problem was no more serious than the mild coercion involved when almost any

special improvement district was formed. Both supporters and opponents of the 160-acre law realized that redistribution would not be accomplished voluntarily but only through government action. But when opponents of the limitation raised cries of "feudalism," "communism," or "totalitarianism," they forgot that they had first clamored for benefits. As Senator Hatch pointed out to Downey: Nobody was trying to do anything to California; the Golden State had come to the United States for help.<sup>21</sup>

### III. THE GREAT EVASION, 1947-1953

Commissioner Straus found himself in a dilemma in 1947-48: He did not want to fight for the 160-acre law, but he dared not abandon it outright. Straus had already indicated that he weighed the redistributive principle in the balance of political expediency. Paul Taylor believed that the commissioner defended the principle as firmly as he did only because Richard Boke had gone to Krug, who had ordered Straus to stand firm. The Bureau's political situation presented several inducements for abandoning the 160-acre law. First, it wanted to mitigate the image of a Washington bureaucracy that opponents of New Deal and Fair Deal legislation were using with considerable effect. Straus stressed conciliation and cooperation in approaching the land questions; the Bureau was not "a prosecuting agency," he said. Second, the future health of the Bureau suggested relief from the 160-acre provisions. Some of the projects the agency wanted to undertake were probably not feasible if ownership were limited to 160 acres;

although many persons argued that the land then was not worth irrigating, the Bureau's desire to continue to expand pushed it towards projects of diminishing cost effectiveness. Third, the generation of power had come to assume importance equal to or even greater than irrigation. Controversial in itself, public power might be further retarded if controversy swirled around the excess land law.<sup>1</sup>

Fourth, the Bureau was trying to fight off an interloper, the Army Corps of Engineers, in the Central Valley. Despite the clearly voiced preferences of Presidents Roosevelt and Truman, the Corps had won Congressional approval to build dams on the Sacramento, Kings, and Kern rivers. These dams provided both flood control and irrigation, but the Corps and opponents of the excess land law argued that, since they were not Bureau of Reclamation projects, the 160-acre limit should not apply. The Department of the Interior found the presence of its old rival, the Corps, on the flank of its prize project intolerable; moreover, the intrusion threatened unified, efficient administration of Central Valley water projects. To remove the Corps, which attracted support from large landowners, the Bureau found it tempting to compromise on the 160-acre law.<sup>2</sup>

Yet Straus dared not abandon the excess land law outright. First, although support for the law within the Department of the Interior was softening, pockets of strength remained, notably Boke and Krug. The secretary testified vigorously in favor of the principle during the 1947 hearings, but his vagueness when pressed beyond generalities diminished the force of his testimony. Second, the 160-acre law was indispensable for continuing national support of reclamation appropriations, particularly among liberals, who were the most receptive to federal spending. Straus seconded this explanation, which Bashore and Arthur Goldschmidt had already outlined in 1944. Reclamation authorizations and appropriations always faced an uphill struggle in Congress because agricultural interests outside the West considered that the reclamation subsidy gave western farmers an advantage. Bashore pointed out that the argument that finally broke through the opposition in 1902, and had continued to prove effective, was that "the reclamation program is a settlement and homesteading program." "As long as reclamation projects fulfill that purpose, public endorsements and public funds can be secured for reclamation projects, and let me remind you that many millions of dollars of public funds still are needed for completion of this project."<sup>3</sup>

To a large extent the Bureau's political dilemma distilled into a question of constituency. A powerful, well organized constituency stood to benefit directly from abandonment of the excess land law. That constituency had to win only once. By contrast, there was no constituency in being that stood to benefit directly from the law's enforcement. While



such a constituency could perhaps be created, as happened with legislation supporting industrial unions in the 1930s, it remained at most a potential rather than an active constituency. Meanwhile the preservation of the redistributive principle relied on a generalized constituency for which the 160-acre law was but one of many social welfare goals. And supporters of the excess land ideal had to win every time.

Straus continued to defend the land limitation, but he limited his arguments mainly to enforcing the laws passed by Congress, curbing speculation, and preserving the historic principle of reclamation policy. Straus exhibited little of the ideological fervor that had characterized the defense in 1944, and the emphasis on reclamation's contribution to correcting the land pattern and to building community were conspicuously absent. The commissioner's rhetorical defense mollified supporters of the law. But as he reassured supporters of the 160-acre law, he subtly offered opponents a way to avoid its substance. The technique was technical compliance. Straus volunteered that if a corporation had ten stockholders, it would be entitled to water for 160 acres per partner. Questioned by Downey, Straus also agreed that a landowner could deed out 320-acre parcels to his married relatives and children and still be in technical compliance. The commissioner raised laughter when he acknowledged that such devices would not constitute "spiritual compliance," but he went on to assure his listeners that technical compliance was good enough for him. A dismayed Downey termed Straus's recitation "blithe," which probably captured the commissioner's tone. Downey continued to insist:

the law is harsh, inflexible, and unworkable. Straus cajoled: don't worry, we're flexible. If liberals could be satisfied with the shadow of rhetoric, opponents could have the substance of nonenforcement.<sup>4</sup>

Straus's performance before the committee set the stage for his next strategic move, the great evasion of the law through administrative reinterpretation. The commissioner advanced the theory that as soon as the construction charges on a project were fully paid acreage limitation would lapse. This argument implied that the excess land proviso should extend only through the period when landowners were receiving the substantial subsidy provided by interest-free financing; in reality, of course, federal subsidy continued throughout the life of the project, even though beneficiaries paid some operation and maintenance costs. Straus intimated that the government's interest was solely in repayment of its investment, not in long-range social policies. In September 1947 he asked the Department's solicitor whether early payment of the construction charges would free excess lands from the limits if they were covered by water-right applications, which were filed by individuals, or if they were "receiving water under joint liability contracts entered into by irrigation districts or similar organizations." The question grew out of intensive discussions within the Department. While posed as nothing more than a matter of legal interpretation, the issue entailed far-reaching policy implications. The solicitor's office could hardly have remained unaware of what the Bureau wanted it to find.<sup>5</sup>

Early payout lifted the acreage limitation for both water-right applications and joint liability contracts, the solicitor's

office ruled. The opinion, M-35004, was drafted in October 1947 by Associate Solicitor Felix S. Cohen, who relied on a passage in the 1912 Act which read as follows: ". . . no person shall at any one time or in any manner, except as hereinafter otherwise provided, acquire, own, or hold irrigable land for which entry or water-right application shall have been made under the said reclamation act of June seventeenth, nineteen hundred and two, and acts supplementary thereto and amendatory thereof, before final payment in full of all installments of building and betterment charges shall have been made on account of such land in excess of one farm unit as fixed by the Secretary of the Interior, as the limit of area per entry of public land or per single ownership of private land for which a water right may be purchased respectively, nor in any case in excess of one hundred and sixty acres, nor shall water be furnished under said acts nor a water right sold or recognized for such excess. . . ." Cohen did not attempt to interpret this passage himself but relied on obscure instructions issued by Will R. King, chief counsel of the Reclamation Service, and adopted for the Department by First Assistant Secretary A. A. Jones in July 1914. The 1947 opinion maintained that King's ruling said flatly that early payout removed lands from the acreage limitation.<sup>6</sup>

Having established this for the lands held by individuals, Cohen went on to apply the idea to tracts in irrigation districts. In the Acts of 1922 and 1926 district contracts supplanted water-right applications; Cohen argued that with these instruments Congress desired

merely a change of form not of policy. Consistency demanded that the same early payout provisions he had just established for the individual contracts should apply to district contracts. "Otherwise, substantially different acreage restrictions might result" simply because joint liability contracts had superseded water-right applications. Therefore Cohen held that "upon full payment of construction obligation under a joint-liability repayment contract, the lands receiving water under such contract are, under the provisions contained in Section 3 of the Act of August 9, 1912, relieved of the statutory excess-land restrictions."<sup>7</sup>

Cohen was a distinguished and imaginative liberal lawyer who had almost single-handedly worked a revolution in federal Indian law during the New Deal. But his 1947 reclamation ruling displayed little of the skill and sensitivity he had applied to Indian affairs. The Ninth Circuit in 1976 was appalled at its "obvious" errors and "surprising superficiality," which the court attributed to the Bureau's political maneuverings. Cohen's opinion was riddled with problems. First, as Paul Taylor pointed out, the passage from the 1912 statute could more logically be read as mandating application of the acreage limitation. The phrase "nor in any case in excess of one hundred and sixty acres" seemed particularly telling. But assuming the section were ambiguous, Cohen might have had recourse to legislative history; instead he relied on King, who had not bothered to read legislative history either.<sup>8</sup>

When he turned to King, Cohen made his second mistake, for he misread the 1914 instructions. Speaking of the 1912 Act, Secretary of the Interior Walter Fisher said that Section 3 would "prevent the consolidation of holdings until such time as full and final payment of the building charge shall have been made. By that time it is

believed that the land will be in the hands of permanent settlers and speculative holdings eliminated." This was because at the time of the enactment of the 1912 law an individual could not -- at least before payout, which would require at least ten years at that time -- receive water for lands in excess of 160 acres. Thus King was dealing only with lands after the normal payout period had elapsed; he was not considering early payout, as Cohen did. Furthermore, King had said only that the 1912 Act could be construed "to permit" delivery of water to excess lands after payout. Solicitor Frank J. Barry pointed out in 1961 that King did not say that such deliveries "could be demanded as a matter of right." Barry thus argued that the secretary of the Interior could permit the delivery of water to excess lands after the normal payout period only if it fulfilled the purpose of establishing family farms.<sup>9</sup>

Third, and most serious, Cohen's opinion ignored key provisions of the Acts of 1914 and 1926. These laws did more than restate earlier statutes; they added the "crucial element" of the "requirement for the sale of excess lands at a limited price." The 1914 Act provided: "Before any contract is let or work begun for the construction of any reclamation project hereafter adopted the Secretary of the Interior shall require the owners of private lands thereunder to agree to dispose of all lands in excess of the area which he shall deem sufficient for the support of a family upon the land in question, upon such terms and at not to exceed such price as the Secretary of the Interior may designate; and if any landowner shall refuse to agree to the requirements fixed by the Secretary of

Interior, his land shall not be included within the projects if adopted for construction." This measure was passed in August 1914, six weeks after King's instructions. The 1926 Act, moreover, contained provisions similar to the 1914 measure and grew directly out of it. Thus the 1914 and 1926 Acts did not merely change the form of contract, as Cohen contended, but added new and vital provisions designed to make the excess land notion effective. The legislative history of both acts indicated continuing support for the acreage limitations.<sup>10</sup>

Had Cohen followed his presumption that Congress desired consistency, he would have found consistent legislative support for the 160-acre law from the Newlands Act through the rejection of the Elliott amendment. His opinion demonstrated considerable dexterity in reading provisions designed to safeguard the acreage limitation in such a manner as to erase it. Nevertheless opinion M-35004 gave Straus just what he needed. He promptly issued Administrative Letter 303 in which he asked regional and branch directors of the Bureau to initiate action in accordance with the opinion.<sup>11</sup>

So far, so bad. The Bureau of Reclamation's chief counsel, Clifford Fix, used the Cohen opinion for a further, and even more questionable, maneuver in 1948. Freeing an entire district from construction charges could be cumbersome. The Bureau wanted the best of both worlds. The solicitor's office had allowed the Bureau to free irrigation districts and some individuals outside districts from the excess land requirements. The Bureau devised its own method of freeing the excess lands of individuals who had joined water districts.

Cohen had talked of "joint liability contracts" without any modifications or qualifications attached. Fix, however, added a significant phrase in Administrative Letter 303 when he referred to a "joint liability contract where the identity of construction charges against specific lands is lacking." The additional phrase had been inserted, he said, to avoid "prejudging" cases where construction charges on individual ownerships could be identified. This would enable these owners to pay their charges and be freed of the land limitation, even though the organization's charges were not yet fully met. The purpose of asking for Cohen's opinion on both the individual and group contracts had been to establish that the provisions of the 1912 Act, which pertained to individual contracts, could apply to individuals in an organizational contract, "even though the words of the 1912 Act themselves are not aptly descriptive of it." None of the regional counsel whom Fix had asked for advice had detected this fancy footwork; they found the Cohen opinion at best ambiguous on how individuals within districts were to be treated.<sup>12</sup>

Undaunted, Fix went on to argue that the only thing now necessary was to identify an individual's share of the construction charges. This required further legal inventiveness: how to determine an individual's construction charges when contracts were made between the federal government and the district as an entity. Fix found that the 1926 Act enabled the secretary of the Interior to determine construction charges as applied to individuals in certain instances. "Admittedly, the provision . . . does not apply specifically to the question we have here," he said. But if these administrative means

could be used for one purpose, "then it seems that it is necessarily true for the purpose of resolving the question at hand." To Fix the matter resolved itself "into the question of an orderly determination of what construction charges at any point of time are properly assignable to a parcel of land and which the owner desires to pay in full." Using the Cohen opinion as a foundation, the chief counsel had opened a third option. Individual landholders, districts, and individuals within districts now enjoyed the possibility of never selling an acre if they made the lump-sum payment.<sup>13</sup>

Through administrative decision, a principle which in 1944 had seemed straight had been twisted and teased into a curl. The administrative route was more circuitous than Downey's three exemptions, yet the process of exemption by bureaucracy raised perhaps even greater dangers. The legal interpretations could apply to any reclamation project, and their very subtlety made them more insidious. The operation recalled James Willard Hurst's observation of the momentous consequences that could flow from the most obscure legal processes. "By enlarging or restricting the scope of such concepts as 'property' or 'navigability,'" Hurst wrote, "lawmakers could favor one interest and subordinate another, in a fashion so quick and quiet, so economical of analysis, seeming so routinely logical in its application of accepted values, that . . . the ranking of interests" could proceed virtually unnoticed.<sup>14</sup>

Perhaps more sinister, the willingness of midcentury liberals such as Cohen, Chapman, and Straus to revise laws administratively to fit their policy goals betrayed a contempt for the law itself. In

1951, for instance, Chapman was feeling frustrated at the administration's inability to persuade Congress to pass legislation authorizing federal development of the oil-rich "tidelands," which the Supreme Court had ruled belonged to the United States. Solicitor of the Interior Mastin G. White obliged with a severely strained interpretation of the Surplus Property Act that would have given Chapman the authority to start a leasing program. But the act clearly applied to such mundane items as surplus typewriters, and Congress administered a humiliating rebuke to Chapman when it learned of his maneuver. The Department also relied on administrative reinterpretations to give Indian policy a 180-degree turn. The Indian Reorganization Act of 1934 had encouraged Indian self-government and community power; after 1950, though the law remained on the books, the Department reversed its field and infringed tribal rights. Nurtured during two decades of domestic and international crisis, the tendency to redefine law to fit policy was one of the darker tendencies of mid-century liberalism.<sup>15</sup>

The Bureau of Reclamation wasted no time in putting its new tools to work. In September 1948 Acting Commissioner Kenneth Markwell expanded on his superior's instructions and asked the regional directors to frame procedures for implementing contracts with individuals, as outlined in the chief counsel's opinion. Krug apparently was not asked for his approval; the action appears to have been handled entirely within the Bureau. Execution of actual contracts required action by the secretary's office, however, and by 1951 approval was forthcoming from the highest level of the department.<sup>16</sup>

Oscar Chapman, who had been Krug's under secretary, became secretary of the Interior on December 1, 1949, following Krug's resignation. Although he had been a fervent New Deal liberal during the 1930s and World War II, Chapman had gradually abandoned his earlier redistributive ideas for the Truman administration's growth strategy. Chapman considered economic growth to be "the very essence of our development as a nation." The keynote of Fair Deal economics was that by expanding the economy, redistribution could be avoided. If the pie could be enlarged, it need not be resliced. The significance of this view for reclamation policy was that it encouraged the Bureau's already prevalent notion that it should focus on the expansion of physical assets and downplay questions of how the benefits from them should be distributed.<sup>17</sup>

Chapman, who as assistant secretary and under secretary, had vigorously defended the 160-acre law, now gave his signature to its evasion. He wrote approvingly of the Cohen opinion, as applied to older projects. It had made possible the elimination of "noncompliance through either the execution of recordable contracts, disposal of excess lands to qualified owners, or through the payment in full of the construction obligation in strict accord with the Reclamation laws as determined by the Associate Solicitor." This statement was misleading because it implied a strict interpretation of reclamation laws when the Cohen opinion had had just the opposite effect. At least three such contracts were negotiated by 1951, with the Gering and Fort Laramie, Goshen, and Pathfinder irrigation districts on the North Platte project. These contracts were submitted to Congress

for approval, which was granted in 1952. On December 12, 1952, Under Secretary of the Interior Vernon Northrop approved 31 lump-sum contracts with water users organizations on the Minidoka project in Idaho. Negotiations were also under way with water districts on the Salt River and Yuma projects in Arizona. The total number of contracts negotiated has not yet been determined. It was plain, however, that by the end of the Truman administration the Bureau was making effective use of its administrative reinterpretations to bring about paper compliance.<sup>18</sup>

Ironically, even though Straus had already engineered some administrative loopholes behind the scenes, his congressional opponents in the spring of 1948 decided to make him and Richard Boke serve as symbolic scapegoats of New Deal redistribution politics. The House attached a rider to an appropriations bill that required that the commissioner of reclamation and the regional directors have ten years' practical engineering experience. Neither Straus nor Boke was an engineer. The Straus-Boke rider, while perhaps triggered as much by the commissioner's arrogance and flippancy in testimony, tended to be more concerned with the technology of projects rather than their social implications. The rider incensed Krug and, even though he said privately the two men were not his first choices for their jobs, he went down the line on their behalf. Chapman told Truman -- somewhat ostentatiously in Straus's case -- that the rider's purpose was "to punish both of these faithful government officials for having zealously carried out the policies of the Federal Reclamation Laws against monopolization of the land and power benefits."<sup>19</sup>

When Downey called for Krug and Straus to resign, Truman responded: "Neither one of these people are expected to resign and if they did I couldn't accept their resignations. I think you ought to know that I need both of those gentlemen and while I know you are on a tear and raising hell with both of them that still doesn't keep me from being for them." The Senate, however, merely reduced the engineering qualification to five years. The Congressional action contravened a Supreme Court decision holding such use of the appropriation power unconstitutional, and the measure aroused fierce opposition. Truman signed the bill with reluctance but denounced the rider as an infringement of the separation of powers and in effect a bill of attainder. Had Congress still been in session he would have vetoed the bill, he said.<sup>20</sup>

Straus and Boke kept their jobs, meanwhile, serving without pay. For Boke, whose independent means were limited, the situation worked a hardship. For Straus, whose wife was wealthy, the lack of salary was not too onerous; he cheerfully kept a chart at his house on which he kept a running total of the hams and other provisions his supporters donated. The pair felt more optimistic when Truman's western sweep in 1948 helped return the Democrats to a majority in Congress. The president again appealed to Congress to remove the rider, and the House voted for repeal, 136 to 87, on February 14, 1949.<sup>21</sup>

But the rider faced greater difficulty in the Senate, for a sinister element was injected into the controversy: loyalty. The Straus-Boke controversy thus became an early, if little known, phase

in the emerging anticommunist hysteria known as "McCarthyism." The House Un-American Activities Committee report on Straus indicated he and his wife had been associated with organizations appearing on the attorney general's list of allegedly subversive groups. Mrs. Straus had been an officer of the League of Women Shoppers and a member of the Washington League for Democratic Action and the Southern Conference for Human Rights, but she had resigned from them before they made the attorney general's list. (All three had ceased to exist by 1949; the Southern conference had enjoyed such distinguished members as Justice Hugo Black, Senator Frank P. Graham of North Carolina, and Oscar L. Chapman.) Straus had played a strictly cameo role in "subversion"; he had appeared as a lion-tamer in an amateur theatrical staged by the shoppers league in 1940. The lion Straus tamed -- portrayed by Carlton Skinner, an Interior Department information officer and later governor of Guam, and Gardner Jackson, minority-rights leader and corporation executive -- represented corporations harassing Leon Henderson's investigation. Henderson, later Office of Price Administration head, and Justice William O. Douglas had also participated in the skit. Straus's well honed sardonic sense appeared in a note to Chapman: "We are here confronted with a major question of national . . . policy," he said. "Before we go any further, I think the public interest requires that it be determined whether or not it was the front half or the rear half of this lion (and I was neither half) which was disloyal."<sup>22</sup>

The Senate Appropriations Committee took Straus's thespian moment all too seriously. Pat McCarran of Nevada insisted that the Federal Bureau of Investigation reports on Straus and Boke be sent to the committee. Following the president's policy, the department refused. "McCarran just raised Hell about this loyalty thing," Krug told Chapman, "that it was a disgrace, an outrage, etc." Joseph O'Mahoney of Wyoming, an Interior Department supporter, reported: "This Straus business is getting tougher by the minute." Against Krug's wishes O'Mahoney did not insist on a vote on the repealer, win or lose. Instead the committee adopted a resolution proposed by Republican Leverett Saltonstall of Massachusetts to form a committee to consult with Attorney General Tom Clark and, if necessary, the president. The three members were McCarran; Guy Cordon of Oregon, who was nearly as adamant as the Nevadan; and O'Mahoney, who Krug feared was wavering. "I must say I am very much discouraged," the secretary said. "It looks like we have lost it," Chapman agreed.<sup>23</sup>

Straus faced an immediate problem -- "how hard I hollar." Chapman characteristically advised him to lie low, but Krug told the commissioner to "say anything you want." Straus then issued a statement saying his loyalty had never been questioned and accusing the O'Mahoney committee of going "off on a tangent." The Wyoming senator was understandably miffed by Straus's statement, but after a conciliatory visit from Chapman he swung behind Straus. In April the trio met with Clark and, though the F.B.I. files remained closed, received assurances that Straus's and Boke's loyalty had been cleared. The

President told Chapman he would veto the entire appropriations bill if it failed to eliminate the rider. Accepting the restriction "would be looked upon by everyone in the western states and in the area where we put up a terrific battle for the President. . . of our yielding to the Republican forces," Chapman noted. Nevertheless when the continuing resolution reached the White House, Truman signed it. Some 15,000 to 20,000 employees had already gone without pay checks for several weeks awaiting action on the measure, and Truman signed the resolution to keep government operations going. He called for prompt repeal of the rider. Finally, as the fiscal year ended on June 30, Congress allowed the rider to lapse. In October 1949 the Senate concurred in a House measure voting Straus and Boke their back pay.<sup>24</sup>

The application of lump-sum contracts to new projects, particularly the Central Valley Project, aroused another storm of controversy in the final months of the Truman presidency. Chapman had learned from an article in the San Francisco News in 1951 -- such were Chapman's sources of information on Bureau policies -- that Straus was considering the application of Administrative Letter 303 in the Central Valley. The secretary told Straus not to apply the lump-sum approach. This possibility had arisen because Pine Flat Dam was nearly finished, and the confusion caused by its construction by the Corps of Engineers instead of the Bureau of Reclamation had never been cleared up. The operation of Pine Flat for flood control purposes would as a matter of course provide landowners in the Kings River area most of the irrigation benefits. The Corps, which had little

interest in irrigation and none in the excess land law, was determined not to relinquish operation of the dam to the Bureau. In 1948 Truman had tried to resolve such situations by enunciating the "Folsom Formula," named after Folsom Dam on the American River above Sacramento. The formula provided that certain dams built by the Corps would be turned over to the Bureau for operation because of their importance to irrigation. Even though the principle clearly fit the Pine Flat case, Truman did not bother to resolve the situation, but left it for the Eisenhower administration. To add to Straus's woes, the Kings River Conservation District and the Corps had rejected the Bureau's attempts to negotiate a settlement of construction charges for irrigation facilities; the Bureau wanted \$14.25 million, the district and the Corps, \$10 million.<sup>25</sup>

Chapman deflected the Bureau only temporarily. In fall of 1952 Straus's agency was willing to drop the excess land principle in an attempt to dilute the water district's resistance. Jack W. Rodner, a Bureau official at Fresno, California, told the district on October 21, 1952: " . . . we also have assured you that the proposed lump-sum payment contract, which you requested and we furnished, would remove the excess land restrictions of Reclamation Law . . ." <sup>26</sup>

The Bureau's gambit boomeranged. The district remained intransigent. The attempt to apply Administrative Letter 303 on the Kings River touched off a bitter and significant, if brief and largely obscured, battle over the excess land ideal. In the last two months of twenty years of shifting liberalism, the Department of the Interior's confusion over the 160-acre law contrasted sharply with its earlier clarity



of purpose. Supporters of the 160-acre law mobilized as they had not since the 1947 hearings. Among the most effective defenders were the three Democratic Congressmen from the Central Valley who supported the 160-acre law; Paul S. Taylor, who revived part of the 1940s coalition; Senator Paul Douglas of Illinois, the former economist who would lead the fight in Congress over the next decade; and James G. Patton, president of the National Farmers Union. Patton warned Truman: "Unless you act fast and decisively, your Administration is about to go down in history, ironically, as the one that pulled the plug on American family farm policy." The president immediately asked Chapman "what he is talking about."<sup>27</sup>

The secretary responded with a brace of memoranda that were designed to clarify the situation but only left it murkier. The secretary did not consult the Bureau of Reclamation but turned to the Program Staff, a small group of experts in his office who advised him on policy matters. Headed by a young economist, Alfred C. Wolf, the Program Staff functioned as Chapman's liberal conscience. On such diverse matters as public power, legislation, tax breaks for big business in the defense mobilization program, and the 160-acre law, the Program Staff consistently urged the secretary to hue to a unified liberal policy in contrast to the willingness of many of the regular bureaus to compromise. The memorandum to Truman attempted to divide the question between law and policy. Without expressing a direct opinion on the validity of Cohen's opinion, Chapman implied that he accepted it as a valid interpretation of the law. The secretary went on to say that, using Administrative Letter

303, the Bureau of Reclamation had "accepted accelerated payout from some excess landowners" but only on some older projects with violations of long standing. "At no time have I concurred in a general policy that lump-sum or accelerated payments would be an acceptable alternative to the application of the excess lands limitation," Chapman said. The memo to Truman thus seemed to mean that the Cohen opinion was correct, that it could be applied on some older projects, but that it could not form the basis for a general policy.<sup>28</sup>

At the same time, however, Chapman sent a memorandum to Straus that seemed to contradict two vital points. "In accordance with the policy statements set forth" in the memorandum to the president, Chapman said, "I am instructing you . . . to refuse to accept any lump-sum or accelerated payment of construction charges from any individual or organization which would, under Opinion M-35004 as construed by Administrative Letter 303" free the individuals or organizations from the acreage limitations. Chapman specifically told the commissioner not to negotiate such a contract on the Kings River. The secretary went on to take issue with Straus's contention, expressed in January 1952, that the Cohen opinion carried secretarial approval and represented departmental policy. Since the opinion did not set forth any policy, Chapman said, it had not been submitted to or approved by the secretary.<sup>29</sup>

Set side-by-side, the memoranda to the president and the commissioner were inconsistent on both policy and law. It was clear enough that Chapman would not endorse accelerated payout as an overall

policy. The presidential memorandum said, however, that lump-sum payments had been approved, at least on some older projects. The memo to the commissioner said, however, that no such payments were acceptable. This would mean that all the contracts recently signed and endorsed in the presidential memo -- including the 31 Minidoka contracts approved by Under Secretary Northrop less than two weeks earlier -- would be invalid. It was not clear why some excess landowners should receive preferential treatment simply because they had been in violation longer than new ones. Nor was the legal half of the walnut much clearer. True, the Cohen opinion had not received explicit secretarial approval. Chapman's attempt to separate the legal and policy questions, however, blinked at reality. Solicitor's opinions often were issued without formal secretarial approval and still became the basis for departmental policy; Fowler Harper's ruling on spouse's holdings served as a case in point. Second, Chapman impliedly approved the Cohen opinion as a legal interpretation in his presidential memorandum. Third, the secretary explicitly cited M-35004 as the basis for the accelerated-payout contracts he had approved. Finally, the opinion was treated as authoritative within the department until specifically limited by the solicitor in 1957 and overruled by the solicitor in 1961.<sup>30</sup>

Taken together the actions of December 12-24 -- the Minidoka contracts and Chapman's memoranda -- had confused more than clarified. It was as if the secretary faced a multiple-choice test with the options "all," "none," and "some of the above" and checked all three.

Straus was incredulous and distraught. He and his staff

concluded that the memorandum to the commissioner would mean the rupture of "dozens of repayment contracts" which the secretary's office had recently signed. Carrying the memorandum with him, he conferred with Chapman on January 6, 1953, and recounted the meeting in a memorandum to the files, which was apparently the only record made of the session. According to Straus, Chapman said "he had not realized the effect of applying the order," told the commissioner to disregard it, and to return the physical item to him. Straus said he handed Chapman the memorandum. The commissioner considered that policy had thus reverted to the status quo ante, "just as if the memorandum of December 23 had 'never happened.'" Straus overlooked, however, or perhaps was not informed of what was apparently Chapman's final statement on the question. On January 17 the secretary wrote Paul Douglas a letter in which he left Cohen's opinion untouched but reiterated the substance of policy he had expressed in the directive to Straus. Three days later Chapman retired from office, leaving policy as murky as the tule fogs that sometimes enveloped the Central Valley.<sup>31</sup>

Nearly everyone connected with the issue was dissatisfied, confused, or angry -- or some or all of the above. Douglas, Taylor, and other supporters of the law had importuned the secretary to revoke the Cohen opinion instead of leaving it as a "boobytrap" to be exploded by later administrations. "We certainly deserved better from the avowed friends of acreage limitation," Douglas sighed. Straus, who was fighting a losing battle to stay in office, called on the new secretary, former Oregon Republican Governor Douglas McKay, to resolve this "fuzzy" and "schizophrenic" situation. If the directive

to the commissioner invalidated the contracts, "obviously such instructions were ill advised in the form issued," said Under Secretary Northrop. But regardless of the merits of the opposing positions, he continued, "it is patently unsound for the situation to rest upon "Straus's memorandum for the files." Fred A. Clarenbach of the Program Staff asked three questions in his own memorandum for the files: "How did the original of the memorandum of December 23 get into the Secretary's file?" "Did Secretary Chapman withdraw the memorandum of December 23?" "What is present Department policy?"<sup>32</sup>

By January 20, 1953, liberal policy on the excess land law had reached its nadir. The department had fashioned the tools to dismantle the land principle in 1947-1948 and begun the operation in 1951-1952, but always under the rhetorical cover of adherence to the principle of the family farm. Unwilling to defend the law, Secretary Chapman during his last month in office proved incapable even of expressing whatever policy he might adopt with clarity.

#### IV. A PARTIAL RECOVERY, 1953-1961

Curiously, the 160-acre law began to make a recovery during the Eisenhower administration. By the end of Secretary Fred A. Seaton's tenure in January 1961, the principle -- through the partial reversal of the 1947-48 legal doctrines -- stood in better shape than eight years earlier. Building on this foundation, Solicitor Frank Barry wrote a decisive opinion in December 1961 that overturned Straus's and Cohen's structure of evasion.

Douglas McKay, secretary of the Interior from 1953-56, allowed the acreage limitation to remain essentially as he had inherited it from the Democrats. A Chevrolet dealer, the former Republican governor of Oregon did not appear to have strongly held views on the 160-acre law. McKay accepted the Cohen opinion as a precedent, but indicated the Department would not adhere to it if it proved to be erroneous. The Department supported several Congressional measures that exempted small projects from the acreage limitation. The most important legislative revision was a bipartisan effort passed in 1956 and known as the "Engle formula" after the liberal California representative, Clair Engle. This formula provided that on some small projects the acreage limitation would be lifted if the landowners repaid part of the interest charge. Although the application of the "Engle formula" was fairly limited, Paul Douglas and others fought the measure as a further weakening of the distribution principle.<sup>1</sup>

McKay took his most controversial step in November 1953 when he authorized the Bureau to negotiate a contract with the Kings River district on the very basis Chapman had ordered Straus to avoid, namely, early payout lifting the excess land limit. The negotiations proved difficult, however, and only a temporary contract was signed to deal with the fait accompli of the release of irrigation water from Pine Flat Dam. By 1956 McKay found on his desk a proposed contract that lifted the acreage limitation upon payment of a lump sum by either the district or individuals. Faced with the actual instrument McKay declined to sign. A decision then fell to his successor, Fred Seaton. In the meantime the California Supreme court ruled four-to-three in the Ivanhoe case in January 1957 that water districts in the

state could not enter repayment contracts which contained any form of excess land limitation. This represented the most serious legal challenge yet to the 160-acre law, and California Attorney General Edmund G. "Pat" Brown carried an appeal to the United States Supreme Court.<sup>2</sup>

Seaton showed an inclination to deal directly, if sometimes slowly, with the principles behind departmental questions. The owner of a chain of small newspapers and radio stations in Nebraska and Kansas, he was a moderate "modern Republican." For the most part his actions fell within a broad consensus of opinion that built a strong measure of continuity with Krug and Chapman. Seaton supported the Eisenhower administration's concept of "partnership" among federal, state, and local governments and the private sector in the development of natural resources; while more reserved about federal expansion of public power, the administration nevertheless continued Democratic projects and initiated significant new ones so that, by 1961, federal power generation showed an increase over 1953. Seaton, who had delivered his maiden speech during his brief appointive Senate term in support of Alaska statehood, saw the Truman era's campaign for statehood for Alaska and Hawaii come to fruition during his term. In several important areas he turned the department to positions closer to New Deal liberalism than had Chapman. Seaton showed greater sensitivity to the balance between preservation of nature and dam-building than had Chapman, who had endangered the principle of national park inviolability by authorizing construction of a Bureau of Reclamation dam in Dinosaur National Monument; he pulled back from the disastrous

"termination" policy in Indian affairs that had originated in 1950; and he promulgated a constitution for American Samoa that went much farther toward preservation of natives' land and culture than anything the Truman administration had contemplated. In this strong element of consensus, the differences were mainly questions of nuance and emphasis.<sup>3</sup>

Seaton could have delayed a decision on the Kings River contracts until the Supreme Court ruled, but the secretary felt strongly enough about the land limitation principle that he decided to reject the proposed contract in July 1957. Some of the secretary's advisors felt the law had been clearly opened to abuse under Straus. C. Petrus Peterson, Seaton's consultant on reclamation affairs, had serious reservations about the validity of the Cohen opinion. Seaton apparently toyed seriously with the idea of overruling the opinion. In the end, however, he limited himself to dealing with the contracts with individuals that Chief Counsel Fix and the supplements to Administrative Letter 303 had opened up. Here Seaton had the benefit of a ruling by his solicitor and former assistant, Elmer F. Bennett, that explicitly rejected Fix's interpretation. "I perceive no ambiguity in the directive Congress has given you" in the 1926 Act, Bennett told the secretary. Its provisions clearly applied to contracts with districts; the 1912 Act applied to contracts with individuals. Each had its specific applications and could not be mixed. "Unrepealed provisions of earlier law, having specific application, cannot be infused with a new life for the purpose of implementing later law, however worthy the objective," the solicitor said. He recognized that some contracts with individuals had been signed between 1949 and 1955,

but some of these had been submitted to Congress for its express approval. The legislature had reserved to itself the right to determine when exemptions should be granted. "Congress has retained control and has not granted the authority claimed in Administrative Letter No. 303, as supplemented," he wrote.<sup>4</sup>

Armed with the solicitor's ruling, Seaton disapproved the proposed contract on July 12, 1957, because of the individual-payment clauses. This contract was particularly obnoxious to supporters of the excess land law because it included not only individual landowners but also "member units" and even lands allocated to shares of stock in corporations. This, said Peterson, was a "reductio ad absurdum." "How can it be said that the stockholder in a corporation owns a part or parcel of the land owned by a corporation?" he asked. "What stockholder would own which acres?" "What becomes of the basic philosophy of reclamation of family units of land if the units are merged in corporate farming and the individual is nothing but a stockholder?" These questions also troubled Seaton. Approximately one-fourth of the land in the district -- 266,302 acres of a total of 1,045,176 -- stood in excess. The fourth was held by 788 owners, including several corporations with 10,000 to 20,000 acres each, out of a total of 6,260 owners. To use a "strained statutory construction" to provide for water for lands "so greatly in excess" would violate the principles of reclamation law, he said. "I remain unconvinced that I either should or could approve this proposed contract -- either as a matter of principle or of law." Whatever discretion he possessed as secretary should be exerted

to obtain compliance with the legislative principles. "What I am concerned about," Seaton said, "is a process by which inferences are based on inferences and there is a whittling away at a principle until all that is left is a pile of shavings."<sup>5</sup>

Seaton's rejection of the contract, coupled with Bennett's ruling, marked an important step in the process of curbing the conventions that had originated during the Truman administration. Seaton still seemed inclined to accept lump-sum payments by districts, but when presented with such a contract in the Kings River case in January 1961, he declined to put his pen to such a contract. While the Eisenhower administration would not earn a reputation as a champion of the 160-acre law, it had at least begun to reverse the process of administrative subversion that had seriously undermined the principle earlier.<sup>6</sup>

Solicitor Barry completed the process that Bennett had modestly begun with an opinion on December 26, 1961, that swept out the Cohen ruling and its appendages and firmly reinstated the redistributive principle. The ruling had been submitted to the Department of Justice and approved by Attorney General Robert F. Kennedy. Barry conducted an extensive review of the reclamation laws and their legislative history -- the first such analysis in the history of the Reclamation Bureau. He found a consistent purpose on the part of Congress to uphold the excess land provisions in the major reclamation laws of 1902, 1912, 1914, and 1926. "The changes that have been made have been in the means to accomplish the end, never to change its fundamental purpose," he wrote. "As the law evolved the Congress has

sought not to weaken but to strengthen; not to open loopholes but to close them; not to encourage speculation but to stop it." He echoed Bennett in holding that specific laws had particular applications. Barry dismissed Cohen's theory of consistency as the "product of a cement mixer in which the individual enactments of the Congress lose all identity and the specific instructions of Congress are ignored." The solicitor accepted King's 1914 instructions but held that they applied only to lands which had gone through the normal long-term payout, not the accelerated lump-sum device. Even then the coalescence of holdings was not a matter of right but remained at the secretary's discretion. Barry underscored Seaton's point that the secretary must use his discretion to further the acreage limitation principle.<sup>7</sup>

These legislative provisions notwithstanding, some might argue that longstanding administrative practice had draped "the mantle of antiquity" over the evasions and left them no longer open to question. But Barry rejoined: "As was once said of a Maeterlinck play, 'There is less in this than meets the eye.'" Administrative decisions prior to 1947 had been scarce and inconsequential. Even Straus, the champion of early payout, recognized that the practice stemmed from the 1947 opinion and its trailers. Controversy had swirled around the opinion and practice soon after its enunciation, Barry noted; no secretary had signed a major contract incorporating the idea on a post-1926 project. In any event "administrative practice, no matter of how long standing, is not controlling when it is clearly clearly erroneous," he said. "Antiquity is not a preservative of error."<sup>8</sup>

The most fervent supporters of the 160-acre law might complain that the 1961 ruling left the door open to possible abuse after the

normal payout period. Nonetheless, Barry's opinion marked a major victory for the principle of acreage limitation. He cleared away the underbrush that some previous administrators had carefully cultivated for the purpose of obscuring the redistributive mandate. Acting on Barry's opinion, Secretary of the Interior Stewart Udall rejected the Kings River contracts that had again been proposed. Enforcement would remain a problem; a solicitor's ruling did not necessarily infuse the Bureau of Reclamation with enthusiasm. For the next fifteen years the focus of the struggle for compliance shifted to the federal courts, which have been the most consistent of the three branches of government in upholding the excess land law.

When the United States Supreme Court decided the *Ivanhoe* case on June 23, 1958, it delivered a major victory for the 160-acre law. The question before the court did not concern early payout but the basic validity of the 160-acre clause. The issue turned in part on the California Supreme Court's ruling that section 8 of the Newlands Act, which said the reclamation law did not interfere with state water laws, invalidated section 5, which applied the 160-acre limit. The California court had held that water districts could not enter into contracts with the Bureau of Reclamation if they contained the quarter-section limit because the covenants would infringe water rights recognized under California law. The high court disagreed. The federal government was not acquiring water rights, as the California panel thought; section 8 did not compel the United States

to meet state-imposed conditions when it was simply operating a federal project. The Supreme Court also dismissed the constitutional challenges. It noted the heavy subsidy reclamation projects entailed and observed that the government clearly had the power to impose reasonable regulations on the use of its funds. No one was being deprived of property without due process, nor was the 160-acre limit discriminatory. "The project was designed to benefit people, not land," said the court. "In short, the excess acreage provision acts as a ceiling, imposed equally upon all participants, on the federal subsidy that is being bestowed." With the Ivanhoe decision the redistributive principle as a matter of general application was safe from constitutional challenges.<sup>9</sup>

Important though Ivanhoe was, the decision was only permissive; the ruling did not require the Interior Department to implement the acreage limitation. The possibility of avoiding large-farm break-up remained alive through the device of early payout. After Barry scotched that possibility, the Interior Department and large landowners agreed to a test case arising from the Tulare Lake Basin of the Kings River service area. The basin contained about one-fifth of the land supplied with water from Pine Flat Dam on the Kings River. The Tulare Lake Basin Water Storage District serviced 188,000 acres, of which 157,000 were held in tracts greater than 160 acres. These holdings constituted the bulk of the 280,000 acres in excess in the Kings River service area. Federal District Judge M. D. Crocker of Fresno, California, ruled that the lump-sum payment freed the water district from the acreage limitations.<sup>10</sup>

The Ninth Circuit Court of Appeals reversed Judge Crocker on

April 5, 1976, however, with the strongest opinion ever written in support of the 160-acre limit. The senior judge of the circuit, James R. Browning, of Great Falls, Montana, dealt primarily with two issues. First, did the reclamation laws apply to the Kings River service area, which had been constructed by the Corps of Engineers? Browning relied in part on an opinion of Attorney General William Rogers in 1958 that had upheld the applicability of the laws on certain Corps dams, in line with Truman's "Folsom Formula." But the court also surveyed at length the legislative history of the Flood Control Act of 1944; it was particularly impressed by the colloquy between Senators Hill and Overton that Arthur Goldschmidt had been instrumental in planting. The court found that the reclamation laws clearly applied to the Kings River area. Second, do the excess land provisions apply after early repayment of construction charges? Guided by the Barry opinion, Browning found that the words of the reclamation statutes and their legislative history clearly called for the breakup of excess tracts. The payout theory's claim to legitimacy was based solely on the 1947 Cohen opinion. "That opinion was invoked beyond its intended purposes," said the court. "In any event, it was patently wrong. Its authority was soon challenged; it remained hotly contested throughout; and it was soon overruled. . . Landowners in that project must execute recordable contracts to sell their excess lands at ex-project prices in compliance with section 46 of the 1926 Act in order to receive project water for their excess lands, even if the irrigation district or other contracting agency through which they receive project water repays its share of the irrigation costs of the Pine Flat Dam." The

Supreme Court declined to hear an appeal. While couched in terms of one project, the Ninth Circuit's opinion appears to apply to all reclamation projects. It is particularly significant because it interprets the acreage limitation as a mandatory requirement of reclamation law, not merely a permissive or discretionary measure.<sup>11</sup>

Amazed by the shallowness of the Cohen opinion, the court ventured into history for an explanation. Browning noted that substantial noncompliance still existed in 1946; he was not fooled by the Bureau's contention that only 3.7 percent of the total irrigable acres stood in violation. He speculated that Straus wished to demonstrate a high degree of compliance on older projects but since it would take too long to secure the individual recordable contracts, he used the Cohen opinion as a way of "achieving rapid 'compliance' . . . albeit 'compliance' by avoidance through payment of construction charges." The judge treated the commissioner's maneuver as a part of an effort to defend the land limitation against Downey's pressure, and he felt that Straus's later attempts to apply the payout idea to new projects reflected a change of position. It appears more historically sound, however, to read the Cohen opinion as part of an overall strategy by Straus to maintain the rhetoric of compliance but avoid actual implementation on all projects, old or new. Straus's "blithe" offer of technical compliance indicated his willingness to sacrifice the distributive principle to legal stratagems. Chief Counsel Fix treated his 1948 construction as an integral part of the process begun with the Cohen opinion. Straus himself interpreted the decisions and actions from 1947 through 1953 as part of a continuous pattern; he did not draw a distinction between old and new projects. In broader terms,

the Department's confusion and evasion during the Truman period contrasted sharply with the intention to enforce the acreage limitation late in Ickes' term. Concentrating on growth, liberals in the Department had lost much of their enthusiasm for redistribution. Thus the failure to implement the excess land law in the Central Valley Project traces in large measure to the failure to initiate the breakup when the project moved into high gear after World War II. Thirty years later it is more difficult still to achieve the intent of reclamation policy, and owners of excess lands have enjoyed large federal subsidies to which they were not entitled.<sup>12</sup>

Three quarters of a century after the passage of the first reclamation act and its land limitation clauses, there can be little doubt about the legal necessity of redistributing excess lands that receive federally subsidized reclamation water. The question, with its broad ramifications, remains under intensive review in Sacramento and Washington during a one-year moratorium to formulate policy. Whether the 160-acre standard will be maintained or raised, and residency requirements modified, is unclear. Some recent studies suggest that even now, thirty years after the "great disjuncture" in American agriculture, 160 acres constitute a viable farm unit in the Central Valley. But the exact size is not so important as the distributive principle. After seventy-five years the legal tools are available, if an administration wishes to realize the ideals of the founders of reclamation.<sup>13</sup>



## FOOTNOTES

1. U.S. v. Tulare Lake Canal Company, 535 F.2d. 1093 (1976).

2. The historian who devotes the most attention to the excess land law is Paul Wallace Gates, History of Public Land Law Development (Washington, 1968), ch. xxii, but he deals only briefly with the controversy from the 1930s to the present (pp. 695-6). The leading authority on the acreage limitation is economist Paul S. Taylor. Of his extensive writings see especially "The Excess Land Law: Execution of a Public Policy," Yale Law Journal, LXIV (February 1955), 477-514, and "Excess Land Law: Secretary's Decision?" UCLA Law Review, IX (February 1962), 1-42. Two key legal opinions -- the Ninth Circuit Court decision, U.S. v. Tulare Lake Canal Company, 535 F.2d. 1093, and an opinion by Solicitor of the Interior Department Frank J. Barry in 1961, 68 I.D. 370 -- devote considerable space to the origins of the acreage limitation and to the period under discussion in this paper. William E. Warne, The Bureau of Reclamation (New York, 1973), also interprets the 160-acre law controversy on pp. 18, 76-85.

## I. PROLEGOMENA: LAW AND LAND TENURE, 1902-1946

1. "Acreage Limitation in the Central Valley -- A Report on Problem 19, Central Valley Project Studies," Sept. 25, 1944, Paul S. Taylor Papers, Bancroft Library, Berkeley; Richard L. Berkman and W. K. Viscusi, Damming the West: Ralph Nader's Study Group Report on the Bureau of Reclamation (New York, 1973), pp. 141, 145.

2. 35 Congressional Record, 6734; 7 Transactions of the Commonwealth Club (1912-13), 108; Gates, History of Public Land Law Development, p. 661.

3. Gates, History of Public Land Law Development, pp. 661-6, 671-2, 674-85; 68 I.D. 370 at 385-395; Bureau of Reclamation, Land Ownership Survey on Federal Reclamation Projects (Washington, 1946), pp. 29-53.

4. 43 U.S.C. §§391, 541, 471, 472, 423e; Richard K. Pelz, ed., Federal Reclamation and Related Laws Annotated, 3 vols. (Washington 1972), I, 31-89, 177-183, 197-198, 376-387; Donald C. Swain, "The Bureau of Reclamation and the New Deal, 1933-1940," Pacific Northwest Quarterly, LXI (July 1970), 142; Gates, History of Public Land Law Development, pp. 691, 698; Clayton R. Koppes, "Conservation and the Continuity of American Liberalism, 1939-1953," California Institute of Technology Social Science Working Paper No. 174 (December 1977), pp. 6-7, 29.

5. Charles E. Coate, "Water, Power, and Politics in the Central Valley Project, 1933-1967" (Ph.D. dissertation, University of California at Berkeley, 1969), ch. 2; William E. Warne, The Bureau of Reclamation (New York 1972), p. 153.

6. Wilbur to Imperial Irrigation District, Feb. 24, 1933, and Harper opinion M-33902 in Senate Committee on Interior and Insular Affairs, Acreage Limitation -- Reclamation Law: Memorandum of the Chairman of the Subcommittee on Irrigation and Reclamation (Washington, 1958), pp. 11-24.

7. Federal Reclamation Laws Annotated, I, 596, II, 728-735.

8. Ibid., pp. 612-3, 712; Senate, Subcommittee of the Committee on Public Lands, Exemption of Certain Projects from Land-Limitation Provisions of Federal Reclamation Laws (Washington, 1947), pp. 120, 994 (hereafter cited as 1947 hearings); "Providing that Excess-Land Provisions of Federal Reclamation Laws Shall Not Apply to Certain Lands," Senate Report No. 1921, 75th Cong. 3d. Sess., 1938; "Amending the Federal Reclamation Laws," House Report No. 3036, 76th Cong. 3d Sess., 1940; Paul S. Taylor, California Social Scientist, oral history transcript (University of California at Berkeley Bancroft Library, 1975).

10. Landownership Survey on Federal Reclamation Projects, pp. 5-14.

11. Ibid., pp. 5-26.

12. Edwin E. Wilson and Marion Clawson, Agricultural Land Ownership and Operation in the Southern San Joaquin Valley (Berkeley, 1945), pp. 22-23.

13. 1947 hearings, p. 45.

14. Wilson and Clawson, Agricultural Land Ownership and Operation in the Southern San Joaquin Valley, p. 30.

15. Ibid., p. 77.

## II. CONGRESSIONAL ATTACK -- LIBERAL DEFENSE, 1943-1948

1. Abe Fortas, "Relationship of Power to Reclamation," Reclamation Era, XXXI (December 1941), 312; Arthur Goldschmidt to Ickes, April 10, 1944, File 8-3, Part 4, Records of the Office of the Secretary of the Interior, RG 48, NA; Charles Coate, "Seventy-Five Years of the Bureau of Reclamation: An Assessment," paper read at Western History Association annual meeting, Portland, Oregon, Oct. 13, 1977; Koppes, "Conservation and the Continuity of American Liberalism," pp. 2-5.

2. Swain, "The Bureau of Reclamation and the New Deal," 145; 1947 hearings, p. 380, but cf. Montgomery and Clawson, History of Legislation and Policy Formation of the Central Valley Project, p. 163;

National Reclamation Association, Proceedings, Irrigation War Food Conference and 12th Annual Meeting, Denver, Colorado (October 27-29, 1943), pp. 67, 201-3.

3. Senate, Subcommittee of the Committee on Commerce, Hearings, Rivers and Harbors Omnibus Bill: California Central Valley Project (Washington, 1944), pp. 593-4 (hereafter Rivers and Harbors Omnibus Bill); Taylor, California Social Scientist, II, 152, 171.

4. 1947 hearings, p. 1191; Sheridan Downey, They Would Rule the Valley (San Francisco, 1947).

5. Taylor, California Social Scientist, II, 180; Rivers and Harbors Omnibus Bill, pp. 584, 774.

6. Senate, Subcommittee of the Committee on Irrigation and Reclamation, Hearings, Central Valley Project, California (Washington, 1944), pp. 190-199 (hereafter Central Valley Project hearings); 90 Congressional Record 9494.

7. Clayton R. Koppes, "From New Deal to Termination: Liberalism and Indian Policy, 1933-1953," Pacific Historical Review, XLVI (November 1977), 547-550; Department of Agriculture, The Farmer and the War -- No. 7: What Post-War Policies for Agriculture, printed in Senate, Special Committee on Post-War Economic Policy and Planning, Hearings, Post-War Economic Policy and Planning (Washington, 1944),

pp. 1170-1178; Chapman to Ickes, Oct. 13, 1943, box 67, Chapman Papers, Harry S. Truman Library, Independence, Mo.

8. Central Valley Project hearings, p. 192; the BAE study, written in 1945, appeared as Bureau of Reclamation, Central Valley Project Studies: Problem 24, Economic Effects (Washington, 1949), pp. 157-8.

9. Rivers and Harbors Omnibus Bill, pp. 678, 617.

10. Goldschmidt's report was published in Senate, Special Committee to Study Problems of American Small Business, Small Business and the Community: A Study in Central Valley of California on Effects of Scale of Farm Operations (Washington, 1946), see esp. pp. 29, 45-50; Walter Goldschmidt, As You Sow (New York, 1947).

11. Small Business and the Community, pp. 112-3.

12. Richard S. Kirkendall, "Social Science in the Central Valley of California: An Episode," California Historical Society Quarterly, LXIII (1964), 195-218; Walter Goldschmidt, "Introduction," Agriculture and the Social Order, forthcoming.

13. Rivers and Harbors Omnibus Bill, pp. 702, 676; 90 Congressional Record 9496.

14. Harper opinion, M-34172, "Application of the Excess Land Provisions of the Federal Reclamation Laws to Community Property States," Aug. 21, 1945, reprinted in Central Valley Project Documents, 2 vols. (Washington, 1957), II, 692-8; Barry to Ben Yellen, Aug. 10, 1977, in Paul S. Taylor to Commissioner of Reclamation, Oct. 24, 1977, copy in author's possession.

15. 1947 hearings, p. 1168.

16. Warner W. Gardner oral history interview, pp. 30,60 HSTL; Koppes, "Conservation and the Continuity of American Liberalism," p. 15.

17. Evelyn Cooper to C. Girard Davidson, April 30, 1946, box 95, Joel D. Wolfsohn Files, Records of the General Land Office, Record Group 49, National Archives, Washington, D.C.; John Shover, First Majority -- Last Minority: The Transforming of Rural Life in America (Dekalb, Ill., 1976); Allen J. Matusow, Farm Policies & Politics in the Truman Years (New York, 1970), pp. 134-9.

18. 1947 hearings.

19. Rivers and Harbors Omnibus Bill, pp. 623-633.

20. 1947 hearings, pp. 122,256.

21. Central Valley Project hearings, pp. 196-204; 90 Congressional Record 9499.

### III. THE GREAT EVASION, 1947-1953

1. 1947 hearings, p. 94; Taylor, California Social Scientist, II, 208.

2. Warne, Bureau of Reclamation, pp. 182-188.

3. Central Valley Project hearings, p. 192; Arthur Goldschmidt to Ickes, April 10, 1944, File 8-3, Part 4, RG 48, NA.

4. 1947 hearings, pp. 104-8, 257.

5. Felix S. Cohen to Commissioner of Reclamation, Oct. 22, 1947, M-35004, Taylor Papers, Bancroft Library (hereafter Cohen opinion). Warne writes that "Straus read the law and tightened up the program" (Bureau of Reclamation, p. 18). Taylor was highly critical of the Cohen opinion as a matter of law and policy, but he reserved most of his criticism of the Bureau's action for the period 1953-54 when Secretary of the Interior Douglas McKay toyed with signing, but eventually declined contracts with the Kings River Conservation District that would have incorporated the early payout ("The Excess Land Law: Execution of a Public Policy," 480-1). Both Solicitor Barry (68 I.D. 370 at 396-402) and Circuit Judge James R. Browning (535 F. 2d 1093 at 1143) recognized the extraordinary character of the actions by Straus and Cohen.

6. Ibid.; 43 L.D. 339 (1914).
7. Cohen opinion.
8. Ibid.; U.S. v. Tulare Lake Canal Co., 535 F. 2d 1093 at 1139, 1140; Taylor, "The Excess Land Law: Execution of a Public Policy," 487-8.
9. 68 I.D. 370 at 382-3.
10. Ibid. at 388-90, 395.
11. Commissioner to Regional and Branch Directors, Dec. 16, 1947, Administrative Letter 303, Taylor Papers, Bancroft Library.
12. Chief Counsel, Bureau of Reclamation, to Commissioner, Sept. 3, 1948, Administrative Letter 303, Supplement 1 - Attachment #1, Taylor Papers.
13. Ibid.
14. James Willard Hurst, Law and Economic Growth: The Legal History of the Lumber Industry in Wisconsin, 1836-1915 (Cambridge, Mass., 1964), p.
15. Koppes, "From New Deal to Termination," 543-566; Clayton R. Koppes, "Oscar L. Chapman: A Liberal at the Interior Department, 1933-1953," (Ph.D. dissertation, Univ. of Kansas, 1974), pp. 403-415.
16. Acting Commissioner to Regional and Branch Directors, Sept. 24, 1948, Administrative Letter No. 303, Supplement No. 1, Taylor Papers.
17. Koppes, "Conservation and the Continuity of American Liberalism," pp. 19-20.
18. Chapman to John F. Shelley, March 29, 1951, Chapman Papers, HSTL; Federal Reclamation Laws Annotated, II, 1106-8; Taylor, "The Excess Land Law: Execution of a Public Policy," n147.
19. Chapman to Truman, May 28, 1948, box 3, Chapman Office Files, RG 48, NA.
20. Downey to Truman, Dec. 5, 1947, Official File 620, box 1515, HSTL; Warne, Bureau of Reclamation, p. 78.
21. Author's interview with Warne, Dec. 30, 1973, Sacramento, Calif.; New York Times, Feb. 15, 1949.
22. Straus to Chapman, March 30, 1949, box 28, Chapman Office Files, RG 48, NA; Denver Post, March 27, 1948.

23. Transcripts of telephone conversations between Krug and Chapman, March 10, 22, 1949, and Krug and O'Mahoney, March 21, 22, 1949, box 50, Krug Papers, Library of Congress Manuscript Division, Washington, D. C.

24. Transcripts of telephone conversations between Krug and Chapman, March 24, 25, April 19, 1949, and Krug and Fred Lawton, May 5, 1949, box 50, Krug Papers, LC; Krug to Truman, April 19, 1949, box 28, Chapman Office Files, RG 48, NA; "Statement by the President," May 12, 1949, OF 6E, HSTL; New York Times, May 13, 1949, Oct. 20, 1949.

25. See OF 620, box 1515, HSTL, esp. Kenneth C. Royall to Truman, Feb. 27, 1948; Presidential message, Jan. 12, 1948; James E. Webb to Truman, March 18, 1948; Frank Pace Jr. to Truman, Aug. 5, 1949; and Pace to Truman, "Past History of Action with Respect to Central Valley, California," Aug. 5, 1949.

26. Director, Program Staff to Fred Aandahl, March 19, 1953, box 1, Program Staff Central Files, RG 48, NA.

27. Patton to Truman, Nov. 24, 1952, box 1, Program Staff Central Files, RG 48, NA.

28. Chapman to Truman, Dec. 24, 1952, ibid., emphasis added.

29. Chapman to Straus, Dec. 23, 1952, ibid., emphasis added.

30. 68 I.D. 370 at 399-402.

31. Straus memorandum for the record, Feb. 6, 1953, box 1, Program Staff Central Files, RG 48, NA.

32. Ibid.; Douglas to Taylor, Jan. 23, 1953, Chapman to Douglas, Jan. 17, 1953, 26.3 Case File Correspondence, Paul H. Douglas Papers, Chicago Historical Society, Chicago, Illinois; Clarenbach to Files, Feb. 3, 1953, Vernon Northrop to Brad, Feb. 18, 1953, box 1, Program Staff Central Files, RG 48, NA.

## IV. A PARTIAL RECOVERY, 1953-1961

1. 68 I.D. 370 at 400; Federal Reclamation Laws Annotated, II, 1338.

2. 68 I.D. 370 at 401.

3. Elmo Richardson, Dams, Parks, & Politics: Resource Development and Preservation in the Truman-Eisenhower Era (Lexington, Ky., 1973), pp. 188-200; Koppes, "Conservation and the Continuity of American Liberalism," pp. 29-30.

4. 64 I.D. 273; Bennett to Seaton, March 19, April 20, 1957, C. Petrus Peterson to Seaton, May 23, 1957, Reclamation Files, Fred A. Seaton Papers, Dwight D. Eisenhower Library, Abilene, Kansas.

5. Peterson memorandum, "Kings River Contract," n.d., ca. June 1957, Reclamation Files, Seaton Papers, DDEL; Seaton to Philip A. Gordon, July 12, 1957, reprinted in Acreage Limitation -- Reclamation Law, pp. 26-29.

6. Paul S. Taylor, "Excess Land Law: Secretary's Decision?" UCLA Law Review, IX (1962), 29-31.

7. 68 I.D. 370.

8. Ibid.

9. Ivanhoe Irrigation District v. McCracken, 78 S.Ct. 1174.

10. U.S. v. Tulare Lake Canal Co., 535 F.2d. 1093.

11. Ibid. at 1143.

12. Ibid. at 1142.

13. One such study is George Goldman, et al., Economic Effect of Excess Land Sales in the Westlands Water District (Berkeley: University of California Division of Agricultural Sciences, Special Pub. 3214, June 1977).